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1-1 General Information

1-1.1 Purpose and Scope of Manual

This manual is published by the State Construction Office primarily as a resource for construction engineering personnel. It is intended as instruction for administering Washington State transportation projects. The manual recognizes established standards and describes accepted engineering practices. The instruction provided by this manual is intended to identify desired results, establish standardized requirements, and provide statewide uniformity in the administration and construction of transportation related contracts.

Construction engineering staff responsible for work on construction contracts will want to be familiar with the guidance and instructions included in this manual. The guidance presented by this manual is intended to complement the requirements of the *Standard Specifications* and the contract provisions and to promote uniformity of results among all Regions of the Washington State Department of Transportation (WSDOT).

Suggestions for corrections, additions, or improvements to this manual, and to the *Standard Specifications* or *General Special Provisions* are welcomed and encouraged. Any means of communication with the Construction Office will be accepted and reviewed promptly.

1-1.2 Definition of Terms

In using this manual, the interpretation of words or terms should be considered the same as set forth under "Definitions and Terms" in Section 1-01 of the *Standard Specifications*. If a conflict should occur between the guidance or instructions offered by this manual and the specifications or provisions identified in the contract, the latter should always prevail.

1-1.3 WSDOT State Construction Office

The State Construction Office strives for consistent, cost-effective, quality construction through direct support of WSDOT's Regional construction program. The Construction Office coordinates the development of policies and standards, provides training, guidance, oversight, technical expertise and advocacy, introduces innovation, and coordinates and shares information on construction issues.

1-1.3A State Construction Engineer

The State Construction Engineer reports to the Director of Environmental and Engineering Programs and is assigned the responsibility for all WSDOT contract construction projects, except those contracts executed by the Director of Washington State Ferries Division. The State Construction Engineer is responsible for all matters pertaining to contract administration and represents the Director in managing the performance of these contracts. In addition, the State Construction Engineer acts for the Director in approving increases or decreases of work, changes in the work, changes in materials incorporated into the work, authority

to accomplish work by force account, extensions of time, and the assessment of any liquidated damages. The State Construction Engineer is responsible for providing guidance and direction to the Regions and State Construction Office personnel who are investigating construction claims and is responsible for the approval of all claim settlements. The State Construction Engineer establishes WSDOT policy relative to inspection and documentation and ensures uniform interpretation and enforcement of the *Standard Specifications* and contract provisions throughout the State. The State Construction Engineer is assisted by three principal assistants for construction as outlined in the Table of Organization shown in Figure 1-1.

1-1.3A(1) Administration

The Construction Engineer, Administration, acts for the State Construction Engineer in setting requirements for contracting, policy, and responding to questions from the regions on all issues pertaining to Division 1 of the *Standard Specifications* and Chapters 1 and 10 of the *Construction Manual*. These include, but are not limited to, time extensions, external civil rights contract changes, prevailing wage issues, documentation, and claims resolution. The Construction Engineer, Administration, also represents WSDOT on task forces with contractor organizations, other public agencies, and at the legislature regarding public contracting issues.

The Construction Engineer, Administration, is assisted by:

- The *Documentation Engineer*, who provides guidance for contract documentation and contract payments, as well as providing support to Region Documentation Engineers. The Documentation Engineer resolves issues of material documentation deficiencies for all federal aid projects, is responsible for prevailing wage issues, and is also responsible for evaluating the contract for Acceptance.
- The *Specification Engineer*, who is responsible for maintaining the *Standard Specifications*, and *General Special Provisions*, and provides guidance and review in the writing of Special Provisions.
- The *Construction Administration Specialist*, who is responsible for the Construction Manual. The Construction Administration Specialist also supports the *Assistant Construction Engineer, Administration* in matters concerning goal setting.
- The *Construction Administration Support Engineer*, who is the CCIS System Manager, the Construction Office Liaison to MIS, supports the Region and Project Engineer offices by providing training in the use of CCIS, the CCIS Sequel Database, and the Construction Data Mart. This position also maintains the *Equipment Rental Rate Blue Book*.
- The *Construction Analyst*, who helps with analysis and reporting. The Construction Analyst also monitors the Apprentices Utilization program.

1-1.3A(2) Roadway

The Construction Engineer, Roadway, acts for the State Construction Engineer in matters of highway construction such as:

| | | |
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| Grading | Drainage | Surfacing |
| Paving | Gravity Walls | Structural Earth Walls |
| Geosynthetic Walls | Concrete Slope Protection | Roadside Restoration |
| Guardrail | Signing | Illumination |
| Traffic Signals | Intelligent Transportation Systems | 3-Sided Culverts |
| Rest Areas | Traffic Control | Slope Stabilization |

For the purpose of establishing uniformity between the Regions, the Construction Engineer, Roadway, is responsible for establishing accepted practices for construction, construction engineering, and contract administration for work performed within these fields. Some of these responsibilities include inspecting projects, evaluating reasons for contract changes, approving change orders, evaluating time extensions and liquidated damage assessments, representing the Construction Office on external civil rights issues, acting as liaison to various external stakeholders and suppliers, conducting or assisting in contract negotiations, investigating complaints and claims, and providing recommendations on major changes to the State Construction Engineer.

The Construction Engineer, Roadway, is assisted by three professional engineers.

1-1.3A(3) Bridges

The Construction Engineer, Bridges, acts for the State Construction Engineer in such matters as:

| | | |
|--|-------------------------------|------------------------------------|
| Fixed Span Bridges | Moveable Span Bridges | Standard Reinforced Concrete Walls |
| Non-Standard Reinforced Concrete Walls | Soldier Pile Walls | Tie-Back Walls |
| Soil Nail Walls | Slurry Walls | Cylinder Pile Walls |
| Noise Walls | Concrete Bridge Deck Overlays | Sign Structures |
| Signal Structures | Bridge Approach Slabs | Other Projects As Assigned |

For the purpose of establishing uniformity between the Regions, the Construction Engineer, Bridges, is responsible for establishing accepted practices for construction, construction engineering, and contract administration of work performed in construction of bridges and other related structural construction. Some of these responsibilities include inspecting projects, evaluating reasons for contract changes, approving change orders, evaluating time extensions and liquidated damage assessments, representing the Construction Office on external civil rights issues, acting as liaison to various external stakeholders and suppliers, conducting or assisting in contract negotiations, acting as a resource to the Regions for resolving construction related

problems, investigating complaints and claims, and providing recommendations on major changes to the State Construction Engineer.

The Construction Engineer, Bridges, is assisted by three professional engineers.

1-1.4 Materials

The Materials Engineer acts for the Director of Environmental and Engineering Programs by directing the materials testing, inspecting, and acceptance functions of WSDOT. Subject to the approval of the Director of Environmental and Engineering Programs, the Materials Engineer; formulates and recommends policies and procedures; directs operating methods to be followed in providing precontract soils, foundation, and materials analysis and testing; recommends and/or approves Pavement Designs; furnishes counsel and technical assistance to the Regional Construction Manager in conducting required materials tests and analysis and provides for periodic review of these test methods and procedures to ensure their conformance to established policies, procedures, and methods; and provides a program that verifies the uniformity of all testing and sampling procedures.

The Materials Engineer is assisted by a staff of professional engineers, administrative personnel, engineers, and technicians.

1-1.5 Region Organization**1-1.5A Regional Administrator**

The Regional Administrator represents the Secretary in a geographic area, organizes and supervises a staff of personnel which perform administrative duties and supervise location, design, construction administration, and maintenance of the transportation system within the Region. For the purposes of this manual, the Administrator of the Urban Corridors Office is considered to be a Regional Administrator.

1-1.5B Regional Construction Manager

In supervision of construction, the Regional Administrator is assisted by a Regional Construction Manager. The Regional Construction Manager assigns Project Engineers with appropriate supporting personnel and provides training and guidance to the Project Engineers. It is the responsibility of the Regional Construction Manager to ensure that sufficient personnel are provided on all projects at all times to ensure adequate inspection, documentation, and quality controls. For the purposes of this manual, the Deputy Administrator of the Urban Corridors Office is considered to be a Regional Construction Manager.

1-1.6 Relationship With Other Agencies**1-1.6A Federal Highway Administration**

The Federal Government provides transportation funding to Washington State through the Federal Highway Administration (FHWA), a division of the United States Department of Transportation. These funds are subject to applicable Federal law, Executive Orders, regulations, and agreements.

ENVIRONMENTAL AND ENGINEERING PROGRAMS

Construction Office

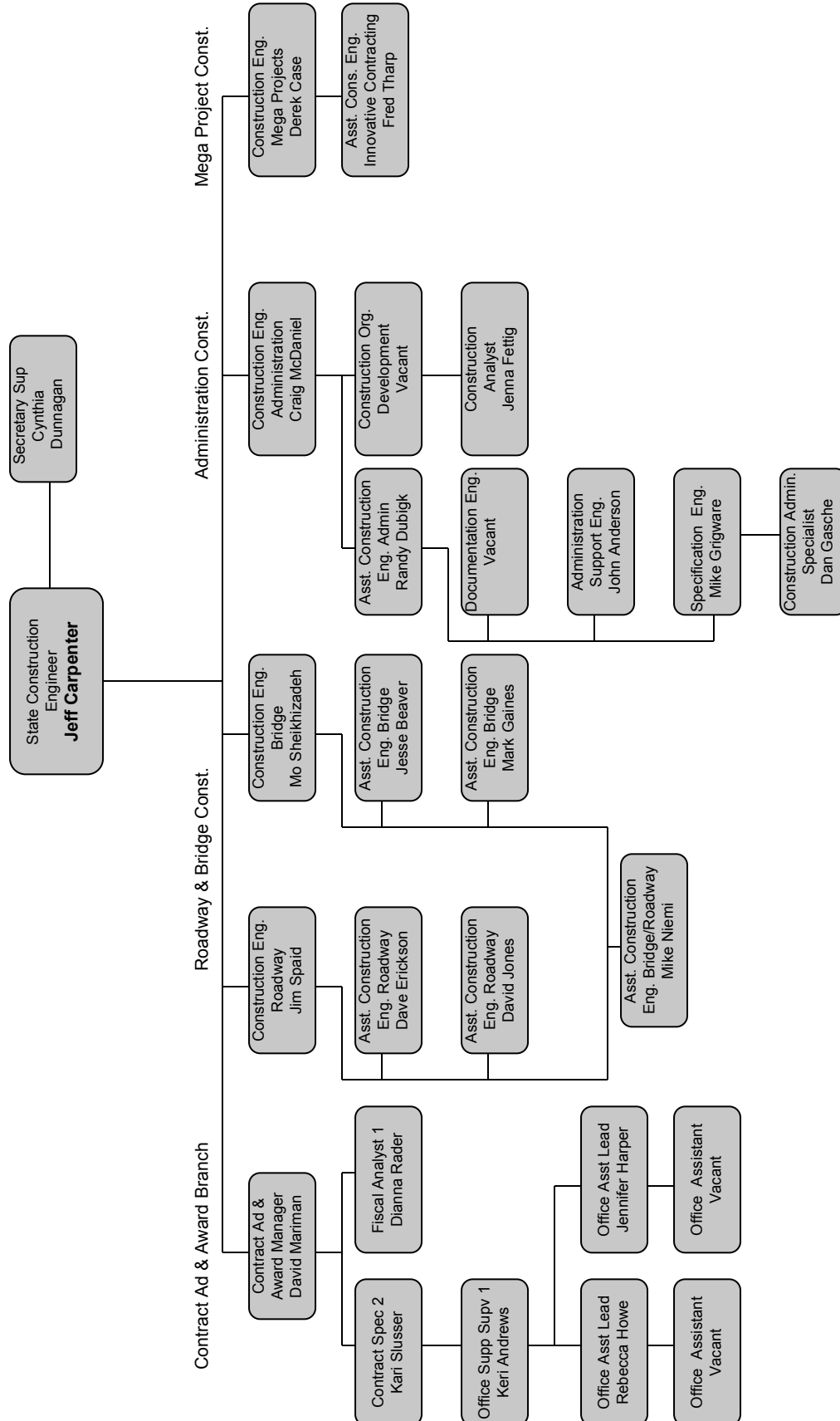


Figure 1-1

The WSDOT contact with FHWA for Construction Administration matters is the State Construction Office. In preparing and approving *Standard Specifications*, general special provisions, and this manual, the Construction Office seeks the review and approval of FHWA. Use of approved provisions and meeting the required outcomes described in the manual become the basis of federal reimbursement.

FHWA provides oversight of WSDOT work on some projects and has delegated that responsibility to WSDOT on others. A full discussion of WSDOT responsibilities under Stewardship is included in this Manual (Section 1-3.4).

1-1.6B Local Agencies

Cities, counties, and other municipalities within the state may also perform work funded with Federal dollars. When this happens, the money is passed through the Department of Transportation and we will have entered into agreements with the local agencies to provide services. For example, WSDOT will allow the use of testing facilities by a local agency.

1-1.6B(1) Project Engineer Administering Local Agency Project

Occasionally, a WSDOT Project Engineer may be assigned to provide engineering and inspection services on a local agency project. The duties of the Project Engineer will be determined by the actual contract provisions and by any specific agreement made between the Region administration and the local agency. The provisions of this manual may or may not apply, depending on the situation.

1-1.6B(2) Local Agency Administering Its Project on State Right of Way

In some cases, WSDOT may grant approval for a local agency to construct a facility on State Right of Way using local agency staff and contractors. (For example, a city funded overpass of an interstate). When this happens, a Project Engineer will be assigned to provide oversight of the local agency work. The Project Engineer is expected to assure that the local agency provides the same level of engineering and inspection that State employees would accomplish. While the Local Agency may have different administrative provisions with respect to risk-sharing and submittal requirements, all of the technical aspects of the *Standard Specifications* and this manual must be met.

1-1.6C Other Federal, State, and Local Agencies

The design and construction of transportation improvements often incorporates locations and features that fall within the jurisdiction of other agencies. It is the policy of WSDOT to cooperate with all agencies as partners in the completion of each project, recognizing and complying with each agency's legal requirements. The Project Engineer shall cooperate with local authorities to help ensure that the contractor complies with local laws, ordinances, and regulations. However, unless specifically allowed in the statutes and the contract documents, no WSDOT employee shall engage in any kind of enforcement of laws, rules, regulations, or ordinances which are the responsibility of other agencies. As WSDOT

attempts to earn confidence and build trust with resource agencies and the public, it is critical that we take the proper actions when we are aware of an issue. When WSDOT employees observe something which is questionable or appears to not be in compliance with local laws, ordinances, and regulations, it shall be brought to the Project Engineer's attention. The Project Engineer is responsible for bringing it to the Contractor's attention for proper action. Rely on the Regional and Headquarters expertise and the appropriate agencies when dealing with complex issues such as environmental compliance, safety, or hazardous materials.

1-1.6C(1) Highways over National Forest Lands

WSDOT has entered into a Memorandum of Understanding (MOU) with the United States Forest Service (USFS) and the Project Engineer is required to do the following when performing work on National Forest Service Lands:

1. Represent the department in all matters pertaining to the project.
2. Confirm that the USFS has been notified of the project advertisement and award.
3. Notify and obtain approval from the USFS for any changes in the project that will affect National Forest System Lands, beyond that of the original contract.
4. Notify the USFS when the project nears completion, at which time the USFS will indicate if they choose to participate in the final review of the project.

1-1.7 Relating to the Public

Public confidence is enhanced by WSDOT personnel being responsive to reasonable requests for information, providing timely advanced notice of possible impacts, and reducing inconvenience to traffic while maintaining worker safety. When possible, the Project Engineer should rely on resources such as Regional Public Information Officers and the State Office of Communications and Public Involvement. If there is concern or reason to question the confidentiality or sensitivity of the information requested, consult with your supervisor or seek the advice of the Attorney General's office.

1-1.8 Safety

Safety is not optional in WSDOT. No employee will be permitted to disregard applicable safety and health standards of the State Department of Labor and Industries or other regulatory agencies.

The Secretary of Transportation's Executive Order E 1033.01 provides direction to all WSDOT employees to adhere to the following basic safety provisions in every work activity:

- Participate in your work group safety plan (or Safety Management System for WSDOT Ferries Division employees).
- Look for ways to prevent accidents.
- Immediately identify hazards and safety concerns.
- Always use personal protective equipment.
- Promptly report all injuries.

The Order also states that all employees at WSDOT Ferries Division are already covered and shall continue to be covered by the existing Ferries Division Safety Management System. Therefore:

- All Ferries Division employees will refresh their knowledge of existing Safety Management System procedures and shall follow them accordingly.
- A concerted effort will be made to address existing and new Safety Management System safety reports in a timely manner.
- All Ferries Division employees shall address issues of concern with existing safety procedures using the existing Safety Management System reporting program.

All other WSDOT employees are covered and continue to be covered by the policies and procedures in the *WSDOT Safety Procedures and Guidelines Manual* M 75-01, and other related policy documents. Therefore, a pre-activity safety plan is required prior to performing any new field work. Office staff will conduct a hazard assessment and mitigation plan for all office environments.

Since WSDOT employees on transportation construction projects are routinely exposed to a variety of hazards, they must take adequate safety precautions at all times. The following items represent common activities that workers or work crews may encounter, and should be addressed in pre-activity safety plans as needed.

- The employee shall ensure that an area is safe before entering it for the purpose of inspection. For example, a deep trench must be adequately shored and braced before entering it.
- Aggregate production and material processing plants should be inspected for safety hazards. Corrective measures should be called to the attention of the Contractor or producer. Corrections must be completed before WSDOT personnel will be permitted to proceed with entry or work upon the premises.
- The employee must, at all times, watch for backing trucks and not depend upon hearing alone for warning. The noise of plants and other equipment often make it impossible to hear trucks approaching and the truck driver's vision area is restricted when backing a truck.
- Parking WSDOT vehicles too close to the path of construction equipment, behind standing equipment, or in other hazardous locations is not permitted.
- Where traffic is maintained in work zones, care must be taken to avoid approaching traffic when it is necessary for inspectors and others to step onto or cross the traveled portion of the roadway. Whenever possible, work activities, ingress and egress, should be conducted within the relative safety of the work zone.
- WSDOT employees working on foot in the highway right of way and other areas exposed to vehicular traffic must comply with the high visibility clothing requirements of Section 4.2, Chapter 3, of the *Safety Procedures and Guidelines Manual* (M 75-01.10).
- Where the engineering crew is working adjacent to traffic, without positive barriers, the work area should be marked with proper signs and traffic control devices

as shown on the appropriate Traffic Control Plan (TCP). The crew may be protected by a certified flagger or spotter as needed.

- When the engineering crew is working under the protection of the Contractor's flaggers and signs, other signs may not be needed, but a "STOP"/"SLOW" paddle should be available for use in special situations. Good communication with the Contractor and Flagger is needed to ensure that they are aware of crew activities within the work zone.
- A survey crew is typically exposed to traffic hazards and should conduct survey work under approved TCPs from the *Work Zone Traffic Control Guidelines* (M 54-44). The Region Traffic Office will assist survey crews with TCPs for situations not covered in this publication.
- During blasting operations, employees are instructed to seek cover at least 500 feet from the location of the blasting.

In addition to the above requirements for workers and work crews, supervisors also have the following responsibilities:

- Each supervisory employee is charged with the responsibility of providing safety leadership at all times and safety enforcement when necessary.
- Supervisors shall give thorough instructions to employees under their jurisdiction on the safe use of tools, materials, and equipment and the safe prosecution of work on construction projects.
- The Division of Occupational Safety and Health requires that every foreman, supervisor, or other person in charge of a crew have a valid first aid card.
- When employees are injured on the job to the extent that the services of a doctor are required, the Regional Safety Officer shall be notified immediately.
- When traffic control measures are necessary, approved Traffic Control Plans (TCPs) should be used in conformance with the *Manual on Uniform Traffic Control Devices*, as adopted by WSDOT. Supervisors should ensure that the appropriate TCP is used and that the necessary signs, devices and equipment are available.

1-1.9 Archaeological and Historical Objects

It is both National and State policy to preserve historical or prehistorical objects and ruins. These objects and ruins may include sites, buildings, artifacts, fossils, or other objects of antiquity that may have particular significance from a historical, cultural, or scientific standpoint.

If provisions for archaeological and historical salvage have not been made in the contract and it appears that significant historic or prehistoric objects or ruins have been or are about to be encountered, the Project Engineer should immediately take steps to preserve and protect the objects or ruins. Once the objects or ruins have been sufficiently protected, the Project Engineer should immediately notify the Region Construction Manager, who will provide any necessary initial assistance to the Project Engineer. Where the Region determines appropriate, the Project Engineer will contact and inform through existing Region environmental

staff, the cultural resources consultant, the State Historic Preservation Officer (SHPO), FHWA, and affected tribes of the discovery. The Project Engineer will also help facilitate any on-site meetings for the appropriate parties should either FHWA, SHPO, or the cultural resources consultant believes it necessary.

1-1.10 Construction Work in International Boundary Strip

The International Boundary Commission of Washington, D.C., by treaty with Canada, has the exclusive jurisdiction of the 20-foot boundary strip, 10 feet on each side of the International Boundary. Any construction work within this strip must be with the exclusive permission of the International Boundary Commission (IBC). Boundary monuments are not to be moved or disturbed in any manner without the expressed approval of the IBC. It is expected that permission for all work within the boundary strip will be obtained from the IBC during the design stage of a project. However, it is the Project Engineer's responsibility to ascertain that permission has, in fact, been obtained from the IBC for all work performed within the boundary strip. The Region shall be immediately notified if, upon construction, it is found that permission has not been obtained to relocate boundary markers or perform construction work in the 20 foot boundary strip.

1-2 Contract Administration

1-2.1 Proposal and Award of Contract

1-2.1A Contract Proposal and Bids

When the design phase of a project is completed and funding has been secured, the public is then notified that WSDOT is ready to accept bids for completion of the work involved. This notice is accomplished by publishing an advertisement for the project, along with an invitation to bid the work, in the *"Daily Journal of Commerce"*. The advertisement includes a specific date and time for the opening of bids along with the necessary information for obtaining plans, specifications, and bid documents. Once advertised, these plans and specifications are then made available to all contractors who wish to study the project. Contract proposal forms or bid documents are also furnished, but only to those prospective contractors who have been prequalified to bid on the types and quantities of work involved. Once bids have been opened, an announcement in the *"Daily Journal of Commerce"* will also be made identifying the "Apparent Low Bidder". Specific information regarding the advertisement phase and bidding procedures can be found in the *Ad & Award Manual*, M 27-02

If the Project Engineer determines that prospective bidders may have difficulty locating the project or determining the project limits, the Project Engineer may choose to post the project limits.

Section 1-02.4 of the *Standard Specifications* requires that all requests for explanation or interpretation of the contract documents be submitted in writing. Anytime the answer to a question from a prospective bidder would provide additional information that would not be available to all bidders, the Project Engineer should immediately contact the Region

Construction Manager or Region Plans Office in order to facilitate the preparation of an Addendum. Answers to such questions must be provided to all bidders in the same manner. If the question has to do with generic issues such as office procedures (for example, methods of payment calculation or handling requests for information,) the answer may be provided directly to the questioning party without involving other bidders.

All questions from prospective bidders regarding an advertised project should be referred to the Project Engineer listed in the "Notice to All Planholders" for a complete response. The Project Engineer will coordinate the effort to determine if any requested information needs to be addressed by an addendum.

1-2.1B Award and Execution of Contract

Bids for the contract are opened at a public meeting where each prospective bidder's proposal is read and the Apparent Low Bidder is announced. Within 45 calendar days of bid opening, the proposals will be closely reviewed and the contract will be awarded to the lowest bidder deemed responsive. In accordance with Section 1-03 of the *Standard Specifications*, the successful bidder is then allowed 20 calendar days to return the signed documents that are necessary to enter into a contract with WSDOT. The Contract Administration and Payment System (CAPS) Unit of Accountability & Financial Services (AFS) sends the awarded contract to the Contractor for execution within 3 days of award. Additional copies go to the Region, State Construction Office, Bridge and Structures Office, other internal WSDOT divisions and railroads as needed.

After these documents are returned to WSDOT, the contract must be approved and executed. No proposal submitted by a Contractor is binding upon WSDOT prior to the date of execution by WSDOT. No work is to be performed within the project limits or WSDOT furnished sites prior to the execution of the contract by WSDOT. Any work that is performed by the Contractor outside of these areas, or any material that is ordered prior to WSDOT execution, is done so solely at the risk of the Contractor.

In order to ensure timely notification to the Contractor regarding execution of the contract and authority to proceed, the following procedure is used:

1. Immediately after execution of the contract documents by WSDOT, the CAPS Unit of AFS or (for Region Ad & Award projects) the Region Plans Office will e-mail notification to the office administering the contract (the Regional Construction Manager's Office, the Director of Terminal Engineering, or the Architecture Office). The CAPS Unit of AFS also notifies, by memorandum, the National Association of Credit Management, and internal interested parties that the contract has been executed and/or the work may proceed.

2. The Regional Construction Manager or a representative should contact the Project Engineer's office as soon as notification is received. The Project Engineer should then contact the Contractor and provide notification of the execution date. The date, time, and method of notification in all instances should be recorded in the project diary.

3. Following the initial contact, the CAPS Unit of AFS will return fully executed copies of the contract to the Contractor.

1-2.1C Preconstruction Meetings, Discussions

The Project Engineer is required to communicate with the Contractor for the purpose of discussing the project and exchanging a variety of information. Depending upon the complexity of the project, this information can be exchanged in any combination of the following methods:

- Information packets provided to the Contractor
- Letters transmitting information
- Informal meetings
- A single multipurpose formal meeting
- Several formal meetings with different purposes

If the Project Engineer decides that a formal meeting is necessary in order to successfully begin work on the project, a meeting should be arranged as soon as practical after the contract is awarded and the Contractor has organized for the work.

In the case of a project that includes utilities to be adjusted, relocated, replaced or constructed by a utility, or their contractor, during the performance of the contract, the Project Engineer shall facilitate a mandatory utility preconstruction meeting with the Contractor, all affected utility owners and their contractors prior to any on-site work. The Project Engineer should request assistance from the Region Utilities Engineer for help in getting utilities to attend this meeting. This meeting should include a discussion of all utility work schedules, in order to enable the utilities and the Contractor to coordinate their work, resolve schedule conflicts, and eliminate delays.

All information exchanged should be documented in the project records, by formal meeting minutes, by file copies of letters, or by diary entries.

The nature, amounts, and methods of communication with the Contractor are left to the Project Engineer. As a minimum, the following subject areas should be covered during the preconstruction time period:

- **CONTRACTOR WSDOT RELATIONSHIPS**
The Project Engineer should begin to develop a positive and effective relationship with the Contractor as soon as the contract is awarded. This is also a good time to introduce the concept of “Partnering” if it has not already been introduced on the project. The Project Engineer should strive to create an environment that encourages a cooperative approach to completing the project. This can be helped by beginning the development of a team consisting of both the Contractor’s and WSDOT’s project people. The level of authority delegated to each member of the Project Engineer’s staff should be discussed with the Contractor. The level of authority of each member of the Contractor’s staff, in particular regarding change orders, should be discussed. In addition the methods of establishing the Contractor’s Performance ratings can be reviewed (Manual M 41 40) (see Chapter 1-2.8F of this manual for additional information). The Contractor should also be informed that there is an opportunity to evaluate the WSDOT construction process as well.

Especially on projects with Contractor surveying, it is strongly advised to invite the Region Survey Committee member or their representative to discuss the requirements for removing, disturbing, or re-establishing survey monuments.

- **ENVIRONMENTAL COMMITMENTS**

If there are commitment files for the project, these should be made available and discussed with the Contractor. Any references in the *Standard Specifications* or the special provisions to environmental requirements or permits should be discussed. The Contractor’s responsibility to obtain any local agency permits should also be discussed. If rock crushers are involved in the project, the State Department of Ecology registration requirements should be discussed (WAC 173-400). In addition, a written record of this discussion should be sent to the regional office of the State Department of Ecology so that they are aware of the timing and location of the rock crushing operation.

- **ORDER of WORK AND TIME SCHEDULES**

In order for the Project Engineer to set up the required crews, arrange for any special inspections, provide timely reviews of submittals, etc., the project office must be made aware of the contractor’s schedule of work. In addition the contract specifications may include specific requirements for sequencing or durations for some items of work. The contract requirements for progress schedule or time for completion in accordance with Section 1-08, or as amended by the special provisions, can also be discussed.

- **SUBCONTRACTORS AND LOWER-TIER SUBCONTRACTORS**

In accordance with Section 1-08.1 of the *Standard Specifications*, the Project Engineer needs to become aware of the Contractor’s plans to delegate portions of the work to subcontractors. These plans must conform to the condition of award, if any, related to disadvantaged business enterprise participation. The Project Engineer should explain the requirements and process involved for subcontractor and lower-tier subcontractor approval, including the prevailing wage rate requirements outlined in the contract documents (see Chapter 1-2.6 of this manual), the requirement to verify that each subcontractor meets the responsibility criteria outline in 39.04 RCW and possesses any license required by 19.28 RCW or 70.87 RCW. WSDOT/Contractor/Subcontractor relationships should also be discussed. The Project Engineer should remind the Contractor that there is no contractual relationship between WSDOT and the subcontractors. All subcontractor correspondence with WSDOT should pass through the Contractor for submittal to WSDOT or vice versa. Contractor representation should also be discussed. It will be necessary for the Contractor to be represented at the job site at all times, even when there is only subcontractor work in progress.

- **UTILITIES, RAILROADS, AND OTHER THIRD PARTIES**

If the project affects or is affected by third party organizations, the Project Engineer must advise the Contractor about the relationships with the third parties

Contract Number: _____

Project Engineer: _____

Contractor: _____

| Subject | Communication Type (Letter, Min. of Mtg., Info. Packet, Diary) Completed (Date) | File Location |
|--|---|---------------|
| A. Contractor/WSDOT Relationship | _____ | _____ |
| 1. General Discussion | _____ | _____ |
| 2. Contractor Performance Rating | _____ | _____ |
| 3. C.O. signature authority (form) | _____ | _____ |
| 4. Discuss Monumentation | _____ | _____ |
| B. Environmental Commitments | _____ | _____ |
| 1. Commitment Files | _____ | _____ |
| 2. Contract Provisions | _____ | _____ |
| 3. Rock Crushers | _____ | _____ |
| C. Order of Work and Schedules | _____ | _____ |
| 1. Discuss Plans for Prosecution | _____ | _____ |
| 2. Formal Schedule Requirements | _____ | _____ |
| 3. Completion Date | _____ | _____ |
| D. Subcontractors and Lower Tier Subs | _____ | _____ |
| 1. General Discussion | _____ | _____ |
| 2. Condition of Award | _____ | _____ |
| 3. Paperwork Process | _____ | _____ |
| 4. 39.04 RCW, 19.28 RCW, 70.87 RCW | _____ | _____ |
| 5. WSDOT/Prime/Sub Relationship | _____ | _____ |
| 6. Correspondence through Prime | _____ | _____ |
| 7. Prime represented on site | _____ | _____ |
| 8. WSDOT will address sub concerns | _____ | _____ |
| E. Utilities, Railroads, and Other Third Parties | _____ | _____ |
| 1. Existing Agreements described | _____ | _____ |
| 2. Commitments, Obligations, Notices | _____ | _____ |
| 3. Underground Locator Service | _____ | _____ |
| 4. Insurance Requirements | _____ | _____ |
| 5. Merchantable Timber (Dept. of Revenue) | _____ | _____ |
| F. Safety and Traffic Control | _____ | _____ |
| 1. Discuss Contractor's Safety Program | _____ | _____ |
| 2. Traffic Control Requirements | _____ | _____ |
| 3. Police Relationship | _____ | _____ |
| 4. Job-Specific Safety Concerns | _____ | _____ |
| 5. Off-site Hauling Restrictions | _____ | _____ |
| G. Control of Materials | _____ | _____ |
| 1. Material Approval Required | _____ | _____ |
| 2. Source Approval for Aggregates | _____ | _____ |
| 3. Acceptance Procedures | _____ | _____ |
| 4. Fabricated Items | _____ | _____ |
| 5. Installation without Certifications | _____ | _____ |
| H. Other Submittals | _____ | _____ |
| 1. Job-Specific List and Discussion | _____ | _____ |
| 2. Delay of 1st Progress Payment | _____ | _____ |
| I. Equal Employment Opportunity and Training | _____ | _____ |
| 1. Contract EEO Requirements | _____ | _____ |
| 2. Contract Training Requirements | _____ | _____ |
| 3. Training Plan/Trainee Appr. Process | _____ | _____ |
| 4. Monitoring and Reporting | _____ | _____ |
| 5. Work Source | _____ | _____ |
| J. Wage Rate Administration | _____ | _____ |
| 1. Prevailing Wage Rates Required | _____ | _____ |
| 2. Payrolls, Wage Rate Interviews | _____ | _____ |
| 3. Davis-Bacon Investigations | _____ | _____ |
| K. Forms/Posters | _____ | _____ |
| 1. Describe Required Forms/Posters | _____ | _____ |
| 2. Provide supply of Forms/Posters | _____ | _____ |
| L. Deferral of Payments (Std. Spec 1-06.3) | _____ | _____ |
| 1. Deferral Triggers | _____ | _____ |
| 2. Notification Method (of intent to defer) | _____ | _____ |

Preconstruction Communication Checklist

and the expectations they hold regarding the actions of both WSDOT and the Contractor. The Project Engineer may wish to arrange face-to-face meetings with representatives of affected third parties. In the case of utilities, reference should be made to the underground locator services and the requirements to utilize them (see RCW 19.122). If WSDOT has agreed to notification time limits, these should be communicated to the Contractor. If special insurance is required by any agreements with third parties, then these requirements should be pointed out to the Contractor.

If utilities are to be adjusted, relocated, repaired or constructed by the utility during the performance of the contract, the Project Engineer shall facilitate a separate, mandatory, utility preconstruction meeting with the Contractor, the utility, and their contractors.

- **SAFETY AND TRAFFIC CONTROL**

The Contractor's safety program should be discussed as outlined in Section 1-2.21(3) of this manual. WSDOT has an interest in safe operations on the job and the Project Engineer should make clear that this interest will be protected. As part of a discussion of specific safety requirements of the particular work, safety considerations for workers and WSDOT personnel, such as safety zone requirements, vehicle intrusion protection, fall prevention, closed spaces, hazardous materials, work around heavy equipment, etc., should be addressed. The need for control of speed on all construction equipment should be emphasized.

The Project Engineer should describe WSDOT's traffic requirements. The Contractor's Traffic Control Manager (TCM), Traffic Control Supervisor (TCS) and WSDOT's traffic control contact person should be identified and their responsibilities and authorities clearly stated. Any traffic control requirements that are unique or restrictive should be emphasized and addressed by the Contractor with respect to construction operations. Unacceptable delays to traffic should also be discussed.

The *Manual on Uniform Traffic Control Devices*, as adopted by WSDOT, is the legal standard for all signing, traffic control devices and traffic control plan requirements on the project. These standards have been incorporated into the project Traffic Control Plans (TCPs.) If the Contractor chooses to use these TCPs, they must be formally adopted in writing as required in Section 1-10.2(2) of the *Standard Specifications*. If the Contractor wishes to use some other traffic control scheme, then that plan must be submitted and approved in advance.

Flaggers and their intended locations must be included in the plans. When Flaggers are utilized, they must have a current flagging card and shall be equipped with hard hats, vests, and standard stop/slow paddles as required in Sections 1-07.8 and 1-10.3 of the *Standard Specifications*. Overuse of flaggers is not appropriate as "catch all" traffic control and should be discouraged. Safety of flaggers, through use of physical protection devices where practical, proper flagging methods and formulating an emergency escape plan, should be emphasized.

The Contractor and the Project Engineer should establish communication with the Washington State Patrol (WSP) and local law enforcement agencies. Law enforcement advice about traffic control should be considered. Arrangements for all law enforcement agencies to notify the project office about accidents near, or in, the construction area should be established, if possible. If WSP traffic control assistance is to be used, a general discussion of strategy and responsibilities should be included.

Off site hauling can pose a safety hazard to the public. WSDOT will cooperate with law enforcement agencies in the enforcement of legal load limit requirements and the covered load regulations. The Project Engineer should discuss this with the Contractor before any hauling begins.

- **CONTROL of MATERIALS**

The Contractor should be reminded of Section 1-06.1 of the *Standard Specifications*, requiring the Engineer's approval of all materials prior to their use. In order to expedite these approvals, the Contractor should be encouraged to make these requests as early as possible. The Project Engineer should provide the Contractor with a current copy of the Record of Materials (ROM) for the project. The Project Engineer should discuss the ROM with the Contractor, covering the various requirements for sampling, catalog cuts, shop drawings, certification requirements, etc., which may be needed for approval of materials prior to their use. If the project includes Federal funds, the Project Engineer should discuss the requirements of "Buy America" and WSDOT Form 350-109 EF, *Certification of Materials Origin*. The requirements of Section 1-06.2 of the *Standard Specifications* for ongoing acceptance of approved materials prior to their being incorporated into the work, should also be discussed. If fabricated items will be needed, the inspection process for fabricated materials, including shop drawing approvals and notification requirements for fabrication inspectors, should also be outlined. The requirements of Section 1-06.3 of the *Standard Specifications* that require manufacturer certifications prior to use of the materials should also be reviewed.

The Contractor should be reminded that, in order to avoid deferred progress payments for portions of work not completed, all necessary documentation for approval of materials and required certifications must be received and accepted prior to their use. A method of notification of intent to defer payment should be discussed with the Contractor, and an agreed upon method documented in the project files.

- **OTHER SUBMITTALS**

Discuss any other submittals that may be needed during the course of the contract. This may include Falsework and Forming Plans, Traffic Control Plans, Temporary Water Pollution/Erosion Control Plans, Schedules, Installation or Operating Procedures, or other Contractor initiated items requiring WSDOT review and/or approval. There are requirements for a number of submittals which, if not satisfied in a timely manner,

could delay the initial progress payment. These include the Statement of Intent to Pay Prevailing Wages, the Progress Schedule, and the Training Plan. There may be others depending on the work to be done and as required by the contract provisions. The Project Engineer should identify and remind the Contractor of these requirements and the potential for deferred payments.

- **DBE PARTICIPATION / EEO / TRAINING**

The Project Engineer should briefly discuss and answer any questions the contractor may have with regard to the efforts, reports, and monitoring necessary to ensure successful performance for DBE *Participation*, *EEO*, & *Training*. Chapter 1-2.7A provides a breakdown of these various programs and the general requirements each contains. However, the specific requirements and contractor performance information are included in the *Standard Specifications for Road and Bridge Construction*, the Amendments included in the contract, as well as the contract specific special provisions titled *Equal Employment Opportunity Responsibilities*. If additional assistance or information is necessary, the Project Engineer could also request assistance from the Region EEO Officer, the State Office of Equal Opportunity, or the State Construction Engineer's Office.

The Contractor should be ready to discuss how utilizing the services of the Department of Employment Security's Work Source will be incorporated into their recruitment program when filling new jobs on the project.

- **WAGE RATE ADMINISTRATION**

Advise the Contractor of the requirement to pay prevailing wage rates as identified in the Contract. Advise the Contractor that it is their responsibility to work directly with Washington State Department of Labor and Industries (L&I) for approval of the Statement of Intent to Pay Prevailing Wages (SI) and Affidavit of Wages Paid (AWP) and that:

- The SI and AWP will be on forms provided by L&I.
- The forms will be obtained from L&I or can be filed electronically with L&I online at www.LNI.wa.gov/prevailingwage, if the contractor is registered by L & I to file electronically.
- The contractors, subcontractors, lower-tier subcontractors, suppliers, manufacturers, and fabricators that are required to submit SI and AWP will pay the approval fee directly to L&I.
- The Contractor will provide the Project Engineer a copy of the approved forms (SI, before any payment can be made for the work performed and all AWP, before the Contractor's performance bond or any retained percentage can be released). If payrolls are required, establish submittal deadlines in accordance with Section 1-07.9(5) of the *Standard Specifications*. Describe the wage rate interview process. Describe the required and/or recommended job site posters and provide them to the Contractor (See Chapter 1-2.6 of this manual). On all Federal-Aid contracts, the Project Engineer must remind the Contractor that the work falls

under the guidance of Davis-Bacon and Related Acts and the Contract Work Hours and Safety Standards Acts. As indicated in Chapter 1-2.6C of this manual, the U.S. Department of Labor may conduct investigations to ensure compliance with these Acts.

- **FORMS**

The Project Engineer should provide the Contractor a description of all required forms, giving the Contractor an initial supply of each. Additional forms required by the Contractor over the course of the work should be provided by the Project Engineer upon request by the Contractor. Remind the Contractor that all form submittals, including those of subcontractors, lower-tier subcontractors, and suppliers, should be routed through the Prime Contractor for submittal to WSDOT.

- **SUMMARY**

While these issues are to be discussed with the Contractor in some manner at the beginning of each contract, the Project Engineer is free to select the most effective method of doing so. A formal preconstruction conference may or may not be the best solution. Perhaps a single meeting is adequate or several meetings may be required. The entire preconstruction communication may also be covered in a short meeting between the Project Engineer and the Contractor. The Project Engineer is responsible to address these subjects, inform the Contractor in some manner and maintain a written summary of the preconstruction meetings or discussions for the contract files.

The Contractor and Project Engineer may be knowledgeable about those normal requirements listed above. In this situation, some items need only be listed in a mailing as a convenience to the Contractor's staff. Unique features, constructability, and third party coordination should be focused on with as many of the interested parties as can be assembled.

The key is effective communication, getting the right message to the necessary people. Additional meetings may be required as people change, as new facets of the work become imminent, or as the project goes into a second or third season. In order to assist this process, a checklist has been developed as a tool for the project office's use. It can be used to help identify the issues and track them for completion through the various preconstruction communications. See Figure 1-4.

1-2.2 Project Engineer's Relationship and Responsibilities

1-2.2A Assignment

The Region will appoint a Project Engineer to act as the authorized representative of the Secretary of Transportation for each contracted project. After the contract has been executed by WSDOT, the Region may provide the Contractor with written confirmation of the name and address of the Project Engineer assigned. (The Region may rely on the special provisions and forego this letter, unless a change is made.) If a letter is sent, the Contractor should be reminded to send all correspondence and forms regarding the project to the Project Engineer.

The Project Engineer is then responsible for enforcement of the contract specifications and provisions and the completion of all work according to the plans. The Project Engineer supervises the work of WSDOT personnel assigned to the project and ensures that they perform their work in accordance with the Plans, specifications and all applicable WSDOT policies. The Project Engineer is responsible for keeping complete and accurate records of all construction data and work progress, preparing progress and final estimates, and preparing other records necessary for a complete documentation of the project, including a performance evaluation of the Contractor (see Chapter 1-2.8F).

Changes made to the project or substitutions for work detailed in the contract plans or specifications, must be made in accordance with the requirements of Section 1-04 of the *Standard Specifications* and the guidance provided by Chapter 1-2.4C of the *Construction Manual*. The Project Engineer should review the project on a regular basis with the Regional Maintenance personnel so they have an opportunity to present any maintenance problems that may arise.

The Project Engineer must, at all times, stay aware of the design implications of actions taken during construction. Change orders and undocumented field adjustments can affect the design standards utilized. If change orders or field adjustments affect the project design criteria, the changes must be documented, approved and incorporated into the Design Documentation Package. The Project Engineer shall contact the Region Project Development staff for guidance in documenting these design criteria changes.

1-2.2B Responsibility as a Public Official

The Project Engineer is responsible for a project that is affected by Federal, State, Tribal, and local laws, ordinances, and regulations. While no one could be familiar with every requirement, the Project Engineer should seek to understand as much as possible. Beyond that, the prudent Project Engineer will look for guidance and seek information related to whatever current issue is at hand. Legal requirements could affect State employees, those employed by the Contractor in performing the work, the materials to be incorporated, the equipment that is used on the project, or could otherwise affect the conduct of work.

If the Project Engineer discovers that any provision of the contract, plans, or specifications appears to be inconsistent with a law, ordinance, or regulation, the inconsistency should be investigated and, if appropriate, referred to the Region Construction Manager. The Project Engineer should, at all times, strive to comply with all laws, ordinances, and regulations.

1-2.2C Relationship With the Contractor

The Project Engineer must be familiar with the conditions of the contract, special provisions, and specifications for the work. The Project Engineer must attend to any reasonable request of the Contractor, i.e., furnishing grades, stakes, plans, etc., whenever necessary and within reason. In general, the Project Engineer should do all things necessary to enable the Contractor to work to advantage and without delay.

The Project Engineer should not set any stakes or furnish to the Contractor any plans which are the responsibility of the Contractor to set or provide. The Project Engineer must ensure that the Contractor performs the work in accordance with the contract provisions, plans, and specifications.

Integrity on the part of all employees is essential. The attitude of the Project Engineer and staff toward the Contractor and the Contractor's personnel should be one of cooperation, consistent with the requirements of the specifications. It should be recognized that both the State and the Contractor have explicit rights under the contract and that both parties must respect those rights. The Contractor is generally trying to fulfill the contract honestly, and errors or difficulties, which may arise are usually due to a lack of information or a misunderstanding. If conflict should occur, the Project Engineer should make every effort to determine the cause of the conflict and make appropriate corrections.

1-2.2D Relationship With Other Government Agencies

Other agencies responsible for such things as flood control, land development, stream navigation, pollution, etc., may be affected by the work. The Project Engineer should attempt to determine that the Contractor has complied with all regulations known to be in effect. The Project Engineer is encouraged to obtain a copy of commitments from the project design file. This should be available from a region or project design office. This file should contain environmental permits, real estate commitments, utility commitments, design deviations, and other good important information. When the Contractor is specifically required by the contract to obtain an approval document from other agencies, the Project Engineer must confirm that the document was received. Other approvals required of the contractor, but not mentioned in the contract documents should be confirmed to the extent that the requirements are known and the confirmation is possible. If a representative of an agency visits the project, the Project Engineer or an inspector should accompany the representative on the visit.

In carrying out construction work in forested areas, the Project Engineer should encourage the Contractor to comply with all Federal and State forest rules and regulations governing the protection of forests and the prosecution of the work within both national and State forests. The Contractor must take all precautions necessary to prevent and suppress forest fires. The Project Engineer shall report to the nearest forest fire warden at the earliest possible moment, the location and extent of any fire and shall take immediate steps to control the fire if practicable.

Construction work in or near streams, rivers, or other bodies of water may require a permit from the State Department of Fish and Wildlife. In an agreement with the agency, for each project requiring a Hydraulics Project Approval (HPA) (RCW 75.20.100), the State Department of Fish and Wildlife will issue the permit to WSDOT only and not to its contractor. One representative of the State Department of Fish and Wildlife will be assigned to coordinate requirements with the Project Engineer. The permit is specific to the work provided for in the contract itself and will not cover other work in support of the project, such as operations in

Contractor staging areas, material sources, or waste sites. When a Hydraulics Project Approval has been obtained for the project, and the permit has not been incorporated into the contract documents, the Project Engineer shall provide copies of the permit to the Contractor and ensure it is properly posted at the work site at all times work is in progress. The Project Engineer should ensure that both the intent and the specific provisions of the permit are rigidly enforced. If the Contractor's method of operations, weather conditions, design changes, or other factors affect waters of the State in ways not anticipated or represented in the Hydraulic Project Approval, the Project Engineer will work with the assigned representative and the Contractor to modify the existing permit or obtain a new or revised one as appropriate.

The United State Department of Labor, Mine Safety and Health Administration (MSHA) has jurisdiction over and inspects mine sites. A pit, quarry, or other aggregate production facilities may be considered a mine site and under the jurisdiction of MSHA. Testing facilities, personnel and equipment located within a mine site are subject to Title 30 Code of Federal Regulations Parts 48 Training and Retraining Miners and 56 Safety and Health Standards – Surface Metal and Nonmetal Mines. When possible WSDOT owned testing facilities should be located outside the fenced area of the mine.

Before entering a mine site, contact the operator of the site and find out what site-specific hazards exist, what personal protective equipment is required and if they are covered by MSHA. For safety reasons request that you be escorted to the sampling site.

Individuals exposed to the hazards of mine sites, pits, quarries, or aggregate production facilities, will be required to have completed New Miner Training. In addition each year these individuals need to complete a total of eight hours of safety refresher training. Contact the Region Safety Office concerning these training requirements. These training requirements can be eliminated if you are escorted through the site by a Trained Miner.

The U.S. Department of Labor, Mine Safety and Health Administration, Metal and Non-Metal Mine Health and Safety Division, 3633 136th Place SE, Suite No. 206, Bellevue, Washington 98006, (206) 553-7037, must be notified at the beginning and closing of all mining operations. This includes surface mining, such as our normal pit site operations. Notification is required for all crusher operations and for all pits and quarries, including borrow pits, which are separated from the roadway under construction. The Project Engineer is responsible for this notification for WSDOT furnished pits and must submit the required report as soon as the date of opening or closing can reasonably be determined. The Contractor is responsible for notification for all pits and quarries not furnished by WSDOT. The Bureau of Mines reports are in addition to reports required by the Department of Natural Resources.

Whenever construction work is performed in navigable waterways, it is necessary to obtain a construction permit from the Coast Guard. One of the requirements of the construction permit is regular submission of Bridge Construction Progress Reports. Two copies of the report should be prepared by the Project Engineer sufficiently in

advance of the first working day of the month and transmitted to the State Bridge and Structures Engineer. When a Coast Guard permit modification is proposed (by the Contractor or WSDOT), it shall be submitted to the Bridge and Structures Engineer for processing through the Coast Guard. The time required for approval/disapproval of the proposed permit modification is variable and depends on the nature and significance of the modification. Up to six months may be required. When all construction obstructions to navigation have been removed, the Project Engineer shall report that fact immediately to the Bridge and Structures Engineer indicating the date removal was completed. Upon completion of all permitted bridge work, a final report indicating the date of completion and certifying that the bridge has been constructed in compliance with the Coast Guard Bridge Permit shall be submitted by the Project Engineer to the State Bridge and Structures Engineer.

1-2.2E Relationship With Public and Private Utilities

In some cases, utility adjustments will be completed prior to contract work. In other cases, adjustments are to be made concurrently with the work. The Project Engineer and the Contractor should meet with the public utility companies, individuals, and others owning or maintaining utility features within the limits of the highway right of way and confirm the relationship, the terms of the relocation agreements, and the relocation work schedule. Where the feature will require adjustment during construction, notice should be provided far enough in advance to allow the utility to perform the adjustment without affecting the Contractor's work schedule.

Utilities should have been given prints of the preliminary plans, prior to awarding of the contract, showing grade lines and right of way to enable them to prepare plans and estimates for making the necessary changes to their facilities in as timely a manner as possible. The Project Engineer should determine that plans for the work have been made, that the relocated facilities will be clear of the construction, and that the utilities coordinate with the Contractor's operations to the fullest extent possible.

When utilities are known to exist within the limits of the project and are not planned for relocation but may be affected by the Contractor's construction activities, the Project Engineer and the Contractor should become familiar with the requirements of RCW 19.122, Underground Utilities. The Project Engineer may wish to obtain copies of the RCW for review at Preconstruction Meetings.

The approximate locations of most existing underground utilities are shown on the contract plans. However, the existence of some underground utilities may not have been known or detected during design. If a one number locator service is available, the Contractor must utilize it in an attempt to locate all affected utility features. If no one number locator service is available, notice shall be provided individually to those owners of underground facilities known to have or suspected of having underground facilities within the area of proposed excavation. Even areas covered by a one number service may contain utilities not included in the service. If the Contractor discovers underground facilities which are not identified, the Contractor shall cease

excavating in the vicinity of the facility and immediately notify the owner or operator of such facilities, or the one number locator service.

1-2.2F Responsibility for Coordination of Railroad Agreements

When railroads are involved within the project limits, an agreement covering the work involved is usually entered into between WSDOT and the Railroad Company. Upon identifying that the contract involves work or involvement by a railroad, the Project Engineer should immediately obtain a copy of the Railroad Agreement or contact the Region Utilities Engineer to determine the status of the agreement and to make sure it contains all elements needed to accommodate the construction of the project. If an agreement has not been made with the railroad, the Project Engineer should coordinate and monitor the development and processing of the agreement through the Region Construction and Region Utilities Engineers. Where notices are required. The Project Engineer should ensure that proper notice is provided to the railroad company and that such notice is acknowledged by them. The Project Engineer should work with the Region Construction Manager and Utilities Engineer to resolve any conflicts with the Railroad Company and prevent delays to the Contractor's operations.

1-2.2G Responsibility for Railroad Encroachment Insurance

Projects which include work on railroad right of way generally require special insurance protection. Pay particular attention to the Contract Special Provisions for project requirements because they vary from project to project. It is the responsibility of the Project Engineer to enforce the provisions. The required insurance documents are to be furnished by the Contractor (usually through the Project Engineer) to the State Accounting Services Office who will (a) review the documents and (b) obtain approval of the insuring documents from the railroad company. Written notification of approval by the railroad company will be furnished to the Project Engineer by the State Accounting Services Office as soon as approval is obtained.

No work shall be started on railroad property until the necessary approvals have been obtained. The railroad insurance must be maintained until the date of physical completion of the project unless otherwise stated. However, the Contractor may make a written request to be relieved of the responsibility to continue all or part of the railroad protective liability insurance before the completion date under certain conditions. The details and conditions for this relief are specifically set forth in the special provisions of the contract. If the Contractor should make a request for relief, the Project Engineer should contact the Region Construction Manager and Utilities Engineer for guidance and assistance in coordinating this effort with the railroad.

1-2.2H Responsibility for Coordinating Work With Other Contracts

When two or more Contractors, including any utility or their contractor, are working in the same area, Section 1-05.14 of the *Standard Specifications* will apply. The Contractor

shall not cause any unnecessary delay or hindrance to the other contractors on the work, but shall cooperate with other contractors to the fullest extent. Progress schedules and plans for all contractors involved should be reviewed by the Project Engineer to detect possible conflicts which might be resolved before a delay of work is experienced or extra costs are incurred as a result. If an adjacent project requiring coordination is known prior to holding a Pre-Construction meeting, it would be beneficial to invite principals from that project to the meeting.

1-2.2I Responsibility for Enforcement of Safety and Health Requirements

1-2.2I(1) General

All contractors doing work for WSDOT must provide safety controls for the protection of life and health of the Contractor's employees and other persons, for the prevention of property damage, and for the avoidance of interruptions in the performance of the work under the contract. As the owner contracting agency, WSDOT has the responsibility for enforcement of the provisions of the contract, however, provisions and regulations which are by law the fundamental responsibility of other agencies, both from the standpoint of interpretation and enforcement, should be monitored by WSDOT, but with full recognition as to the responsibilities and authorities of those agencies. The Project Engineer will cooperate fully with the responsible agency.

Any violations noticed by the Project Engineer will be brought to the attention of the Contractor for correction. The Project Engineer will also notify the responsible agency (if that action is deemed necessary by the Region Construction Manager) and utilize such sanctions as are consistent with contract terms in assisting the responsible agency in enforcing laws, rules, and regulations.

The Contractor is obligated by law to comply with both State and Federal safety regulations. State regulations are administered by the Washington State Department of Labor and Industries under the Washington Industrial Safety and Health Act (WISHA). Federal regulations are administered by the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA) of the U.S. Department of Labor, which has jurisdiction over Federal safety requirements for pit and quarry operations up to the point where materials leave the quarry area or go into a batch plant. Inspectors from any or all of these agencies may review the Contractor's operations at any time. (See Section 1-07.1 of the *Standard Specifications*.) in order to fulfill WSDOT obligations to monitor contract operations in accordance with the above, the following procedures should be followed on both Federal-aid and non Federal-aid contracts.

1-2.2I(2) Precontract Preparation

- The Project Engineer shall obtain the WISHA manuals, particularly Safety Standards for Construction Work WAC 296-155, General Safety and Health Standards WAC 296-24, and General Occupational Health Standards WAC 296-62, and shall review them with the key field WSDOT inspectors to ensure reasonable

familiarity to the extent that they can recognize important requirements.

- The Contract Plans and contract provisions should be reviewed to identify those aspects of the work meriting special attention from the standpoint of potentially dangerous types of work and hazard elimination.
- The project site should be reviewed to identify those aspects of the location that present hazards such as limited sight distance, confined spaces, difficult terrain, extreme temperatures, illegal encampments, or exposure to biological and physical hazards associated with animals or humans.

1-2.2l(3) Preconstruction Duties

As part of the Preconstruction Meetings and Discussions (see Chapter 1-2.1C), the Contractor's safety program should be discussed. Some of the things that the Project Engineer may want to consider are:

- The contractual obligation of the Contractor for complying with State and Federal construction safety standards. (See Section 1-07.1 of the *Standard Specifications*.)
- The availability of the safety standards that apply to the contract.
- The accident prevention program of the Contractor — organization, staff, names of responsible individuals, meetings, training, reports, etc. A review of specific areas for which plans are required (especially those also affecting WSDOT personnel). These might include Fall Protection, Confined Spaces, Respirators, Hearing, and Hazardous Materials plans. Implementing a mechanism for employees to report "near misses" and/or work zone accidents.
- The Contractor's responsibility for seeing that subcontractors comply with safety regulations.
- The Contractor's plans for meeting specific safety requirements and for eliminating potentially critical hazards on the project for all Contractor employees, Contracting Agency employees, and the public.

1-2.2l(4) The P.E.'s Role in Safety on the Project

It is difficult to generalize about safety. It's a judgment call which is dependent on risk, knowledge, authority to direct corrections, etc. As people, professionals and representatives of the State, Project Engineers have an obligation to take action if they become aware of a situation that presents an immediate threat. Project Engineers should advise their employees on what the lines of communication are and what the procedures are for alerting the responsible agencies with regard to serious safety hazards.

Employees should be made aware that the Contractor is obligated to make the work-site safe, to their satisfaction, for inspection activities. Anyone who is uncomfortable with access for inspection should inform their supervisor of the situation and expect resolution. Project personnel should also be made aware of project specific hazards and be trained in specific areas as the project warrants. For example; fall protection, confined space requirements, respirator training, lead paint hazards, hazardous material training, and exposure

to medical waste (sharps). It is suggested that the expertise of the Regional Safety Officers or Headquarters Safety Office be utilized as appropriate.

Be aware that the construction contract requires the contractor to perform any measures or actions the Engineer may deem necessary to protect the public, and that the Engineer may suspend work if the Contractor fails to correct unsafe conditions. Project staff should continuously monitor the Contractors' work activities for potential violations of legal safety requirements, and for any condition that poses an immediate threat to the health of any person. Immediately notify the Contractor upon becoming aware of any such condition.

Additional information, such as safety regulations and Department of Labor and Industry (L&I) contacts, are available on the Internet at www.wa.gov/lni/. Keep in mind that many WSDOT employees are not trained to interpret and apply safety regulations; however, employees need to have a reasonable understanding of what hazards may be encountered on a project. Many, but not all, of the requirements are listed under Chapter 296-155 WAC, "SAFETY STANDARDS FOR CONSTRUCTION WORK" under the various "Parts A through V".

State L&I offers consultation service (advice is given) and enforcement (assessment of a violation would result in a citation being issued). A listing of phone numbers for the various L&I field offices is as follows:

| | | |
|--|--|--------------|
| REGION 1 Offices | | |
| Bellingham Field Services Location | | 360-647-7300 |
| Everett Field Services Location | | 425-290-1300 |
| Mount Vernon Field Services Location | | 360-416-3000 |
| REGION 2 Offices | | |
| Bellevue Field Services Location | | 425-990-1400 |
| Seattle Field Services Location | | 206-515-2800 |
| Tukwila Field Services Location | | 206-835-1000 |
| REGION 3 Offices | | |
| Bremerton Field Services Location | | 360-415-4000 |
| Port Angeles Field Services Location | | 360-417-2700 |
| Tacoma Field Services Location | | 253-596-3800 |
| REGION 4 Offices | | |
| Aberdeen Field Services Location | | 360-533-8200 |
| Kelso Field Services Location | | 360-575-6900 |
| Tumwater Field Services Location | | 360-902-5799 |
| Vancouver Field Services Location | | 360-896-2300 |
| REGION 5 Offices | | |
| East Wenatchee Field Services Location | | 509-886-6500 |
| Kennewick Field Services Location | | 509-735-0100 |
| Moses Lake Field Services Location | | 509-764-6900 |
| Yakima Field Services Location | | 509-454-3700 |
| REGION 6 Offices | | |
| Colville Field Services Location | | 509-684-7417 |
| Pullman Field Services Location | | 509-334-5296 |
| Spokane Field Services Location | | 509-324-2600 |

1-2.2l(5) Pedestrian Safety

When the work area encroaches upon a sidewalk, crosswalk, or other areas that are near an area utilized by pedestrians or bicyclists, special consideration should be given to their

accommodation and safety. Pedestrians are more susceptible to personal injury in work areas than are motorists. Visibility and recognition of hazards is an important requirement for the safety of pedestrians and bicyclists.

Protective barricades, fencing, handrails, and bridges, together with warning and guidance devices, should be used so that pathways for pedestrians, bicyclists, equestrians, and other non-motorists are safe and well defined. Where walks are closed by construction or maintenance, an alternate walkway should be provided where feasible. Where it is necessary to divert pedestrians into the parking lane of a street, barricades and delineation should be provided to separate the pedestrian walkway from the adjacent traffic lane. Pedestrians should not be diverted into a portion of the street used by vehicular traffic. At locations where adjacent alternate walkways cannot be provided, pedestrians can be diverted across the street by placing appropriate signs at the construction limits and at the nearest crosswalk or intersection. When hazardous work conditions exist overhead, it may be necessary to install a fixed pedestrian walkway of the fence or canopy type to protect and control pedestrians. In such cases, wood and chain link fencing can be used with warning lights and illumination to warn and guide both pedestrians and motorists. These accommodations for pedestrians and bicycles should be included in Traffic Control Plans.

Fences around a construction area are often necessary and may be a requirement of the local jurisdiction building code. They are often constructed in conjunction with a special pedestrian walkway or when there are deep excavations or when pedestrian access to the job site is not desirable. Installation of such fencing must take into account relocation of existing control devices and facilities such as traffic signals, pedestrian signals, traffic signs, and parking meters. The use of chain link fencing which can be seen through may be needed at intersections to provide adequate sight distance.

Relocating a walkway without unreasonable inconvenience to pedestrians, residents, or commercial interest, is the safest practice of all. Remember, however, that pedestrians like to “see what’s going on”. Simply denying them access does not, of itself, prevent their encroachment onto the worksite. Sometimes it is advisable to design and construct a pedestrian observation area for this purpose.

1-2.2I(6) Site Cleanup and Removal of Illegal Encampments

Site Cleanup

Some contracts contain specifications for site cleanup. This may include the removal of illegal encampments, unauthorized pedestrians, personal property, refuse, and other biological and physical hazards from the work area. The Contractor is required to perform all necessary work, and to take precautions to maintain the health and safety of all workers and the public, who may be in the work area. It is the responsibility of the Project Engineer to inspect the Contractor’s work and ensure compliance with the contract requirements and with all applicable laws. Each Project Engineer should appoint a contact for encampment removal issues.

The Contractor is required to have a Health and Safety Plan, and to submit the plan to the Project Engineer prior to commencing any cleanup work. The Project Engineer should ensure that the plan is prepared in accordance with contract provisions.

The Contractor will furnish and install “No Trespassing” signs in all areas where pedestrians may be encountered, except where pedestrians are legally allowed. “No Trespassing” signs must be posted no less than 72 hours prior to beginning site cleanup work or any other potentially hazardous work. If the site contains encampments, the signs should be posted at each encampment. The Project Engineer should conduct a site visit in order to verify that the signs are posted correctly and meet the requirements of the contract.

At the time the signs are posted the Contractor should provide written notification to the Project Engineer and local jurisdictions. When the work includes removal of encampments the Contractor should also notify local advocacy groups that site cleanup and removal is scheduled.

After the initial removal of encampments, the Contractor should revisit the area at regular intervals, and if encampments persist, permanently post the area with “No Trespassing” signs and proceed with removal activities.

Immediately prior to commencing cleanup and removal, brush clearing, or other potentially hazardous work, and periodically throughout the day, the Contractor should visually inspect the area to ensure that no unauthorized pedestrians are present. The Project Engineer should verify that the site is cleared of pedestrians and that periodic area checks are being done. Special attention should be given to areas hidden from view, such as in dumpsters or equipment, or under blankets. The Project Engineer may consider the use of non-invasive detection aids, such as infrared detectors, to ensure that no unauthorized persons are present.

Removal, Storage, and Return of Personal Property

Personal property that is not refuse will be removed from the work area, by the Contractor. Items should be placed in large transparent plastic bags, labeled, and stored for return to the property owner. The Project Engineer should ensure that personal property is handled and stored in accordance with the requirements of the contract and all applicable laws.

1-2.2J Responsibility for Environmental Considerations

During the precontract period, the Project Engineer should obtain copies of the final Environmental Impact Statement and any special environmental studies related to the project. It is important that all key personnel become familiar with the environmental decisions considered during the design process. The contract documents should include necessary provisions for protection of the environment, including requirements that the Contractor secure permits from and abide by regulations of appropriate Federal, State, and local agencies. Any changes in contract work that may become necessary must also be reviewed to ensure conformance with the original intent, requirements, and commitments established during the environmental design of the project.

1-2.2J(1) Spill Prevention, Control, and Countermeasures (SPCC) Plans

Spill Prevention, Control, and Countermeasures plans are written by the Contractor to prevent, respond to, and report hazardous material spills in a safe and effective manner. All WSDOT projects should have a project specific SPCC Plan and the plan must be submitted to the Project Engineer prior to starting any on-site work. The plan should be reviewed by the Project Office for compliance with Chapter 6-3 of the *Highway Runoff Manual* (M31-16.01). WSDOT personnel who review SPCC plans are required to take the class – “Spill Plan Reviewer Training”, (ATMS course code: BYZ).

SPCC Plans should include information regarding the project site and contractor activities as they relate to spill prevention, control, and response activities. Additionally, SPCC Plans should identify possible sources of hazardous materials, methods to prevent and control spills, and spill response procedures. Plans are written and maintained by the Contractor and are required on all WSDOT projects, regardless of the size or duration of construction activities.

SPCC Plans are applied to the life of a construction project and may need to be amended over time with changing conditions. Periodic inspections will ensure that the required preparation and preventative steps identified in the SPCC Plan have been taken to keep the site in compliance throughout the life of the project.

The *Standard Specifications* provide the complete list of required contents for the Contractors SPCC Plan in Section 1-07.15(1).

1-2.2K Responsibility for Environmental Compliance During Construction

The following procedure pertains to WSDOT personnel on all WSDOT contracts and contains duties and activities by persons other than the project staff, but all of which are related to construction contracts and affect the Project Engineer to one degree or another. The Project Engineer must stay aware of this procedure and follow it as written.

1-2.2K(1) Environmental Compliance Assurance Procedure

The purpose of the Environmental Compliance Assurance procedure is to recognize and eliminate environmental non-compliance events during the construction phase on Washington State Department of Transportation (WSDOT) construction sites, and to ensure prompt notification to WSDOT management and agencies. For purposes of this procedure, non-compliance events are defined as actions that are not in compliance with environmental standards, permits, or laws.

When any action (Notification Trigger) below occurs or if there are questions about compliance, the Project Engineer (PE) shall initiate this procedure to develop corrective actions to solve the identified problem. The Regional Environmental Manager (REM) will serve as a resource to the PE and give priority to addressing the actions, activities, or situations that stem from notification triggers. The PE and REM will work together on an appropriate response to the notification trigger to avoid or minimize environmental damage.

A. **Notification Triggers:** “Notification Triggers” (listed below) means an action, activity, or situation that requires the Project Engineer to implement the Environmental Compliance Assurance Procedure.

1. Notice from a resource agency that a violation has occurred;
2. Any action that, in the judgment of the REM, contractor or Project Engineer, may violate environmental permit conditions, agreements, or approvals for the project; or other environmental laws, ordinances, or regulations;
3. Any unauthorized work, activity, or fill in wetlands, shorelines, creek beds (including dry channels), other waters of the state, or critical habitat;
4. Any emergency protection activity that involves unauthorized placement of fill in wetlands, shorelines, creek beds (including dry channels) or waters of the state or for bank stabilization activities where fill or structures are placed on the bank;
5. Any action or project revision requested by an agency after a site inspection that may be in conflict with other permits;
6. Any spill, or release of hazardous materials, petroleum products, or chemicals to:
 - water or areas that have the potential to enter waters of the state (i.e. stormwater conveyances, ditches, swales, ground water).
 - land, when the spill or release is an immediate threat to human health or the environment (i.e. dangerously toxic, explosive or flammable situations that result in severe or substantial consequences, etc.).¹
7. Any evidence of a release from a buried underground storage tank.
8. Any situation that results in a fish kill, or if dead or dying fish are discovered in the vicinity of the project;
9. Activities that monitoring shows are out of compliance.

B. **Notification and Resolution Process:** In the event of a notification trigger, the following steps shall be taken:

1. If a notification trigger is observed first by the contractor or REM, the contractor or REM shall immediately notify the Project Engineer.
2. The Project Engineer must:
 - Step 1. Immediately notify the Contractor of the situation, implement emergency response procedures including agency notification, and suspend all non-conforming work on the site.
 - Step 2. Immediately notify the Regional Environmental Manager (REM). Consultation with the REM must occur before any remediation actions are taken.

¹ Note: All spills need to be contained and disposed of and reported properly. Follow the procedures outlined in the project specific Spill Prevention, Control and Countermeasures Plan (SPCC).

- Step 3. In consultation with REM assemble the following information
- The activities that triggered the notification and why they occurred.
 - Location of the work.
 - Potential solutions to the problem, or if additional investigation is needed, the agreed upon course of action.
 - Any related site constraints or safety issues.
 - Urgency of the issue
- Step 4. Notify his or her immediate supervisor.
- Step 5. *Notify the Regional Administrator.
- Step 6. In consultation with the REM, determine the resource agencies having jurisdiction and who will notify them.
- Step 7. Document all actions, conversations and activities.
3. The Regional Environmental Manager must immediately:
- Step 1 *Notify the Director of Environmental Services.
- Step 2. Notify his or her immediate supervisor.
- Step 3. Work with the Project Engineer to resolve the issue that caused the notification trigger.
- Step 4. Identify and obtain appropriate permits or permit revisions with the aid of the Project Engineer.
- Step 5. Document all actions, conversations, and activities. Communicate issues and send appropriate documentation to Regulatory and/or Resource Agencies.
4. *The Director of Environmental Services must immediately:
- Step 1. Notify Compliance Branch Manager and any other ESO Program Managers associated with the resource issue.
- Step 2. Notify Director of Environmental & Engineering Programs.
- Step 3. Notify the Regional Environmental Manager that the Director of Environmental & Engineering Programs has been contacted. Regional Environmental Manager must then notify the Project Engineer that the reporting procedure has been completed.
5. *The Regional Administrator will:
- Step 1. Coordinate with the Director of Environmental & Engineering Programs to contact the Assistant Secretary of Engineering and Regional Operations advising him or her of the situation, and provide updates as needed on the situation.
- Step 2. Ensure that the Project Engineer and the Regional Environmental Manager have the necessary resources, authority and organizational support to successfully resolve the Non-complying activity.
- C. **Timing:** Due to costs of project delays, or risk of not acting quickly during emergency situations, the REM shall provide a 24 hour contact person for environmental consultation.
- D. Documentation:
- The Project Engineer shall document the details of the notification and non-complying activity resolution in the contract records.
 - The Regional Environmental Manager shall maintain a record of all regional non-compliance events. REMs shall collect and maintain, at a minimum, the following data on all non-compliance events:
 - Project name and Location
 - PE and Prime Contractor
 - Incident Date
 - Incident Description
 - Permit/Regulation Violated
 - Resource Agency(s) notified and date of notification
 - Whether or not resource agency staff conducted site review in response to notification
 - Record of Notice Of Violation and/or penalties issued
- The REM shall provide all regional non-compliance tracking data to ESO Compliance Branch Manager for the purposes of annual reporting and review of compliance performance.
3. The Project Engineer and the Regional Environmental Manager shall coordinate and prepare the appropriate response to the regulatory and/or resource agency. The response shall include documentation about the non-compliance event and how it was resolved, including any preliminary mitigation solutions.
- E. Roles and Responsibilities:
- “Project Engineer” is the person responsible for the project and administration of the construction contract. This responsibility may be delegated to a subordinate employee on site, but the ultimate responsibility for making sure these procedures are followed will be with the Project Engineer. The Project Engineer shall have a thorough knowledge of all of the environmental permit conditions and design requirements for the project, and have such certifications and other qualifications as may be required.

2. “Regional Environmental Manager” is the person responsible for administering the regional environmental program. This responsibility may be delegated to a subordinate employee with knowledge of environmental permitting and procedures, but the ultimate responsibility for setting and interpreting regional environmental policy will be with the Regional Environmental Manager.

3. “Contractor” is as defined in Section 1-01.3 of the *Standard Specifications* for Road, Bridge, and Municipal Construction.

**Denotes that the action is mandatory when the non-compliance event 1) results in agency enforcement staff coming on site to conduct enforcement review; and/or 2) there is a high likelihood the event will result in a Notice Of Violation or a monetary penalty.*

1-2.2L Responsibility for Posting Required FHWA and State Labor and Industries Job Site Posters

A combination of both State and Federal laws require that on all WSDOT administered contracts some or all of the posters listed below are to be posted at the place of employment such that all employees have ready and free access to inspect their contents. The Project Engineer must ensure that the Contractor complies with these requirements.

- FHWA 1495 and 1495A — Wage Rate Information
- FHWA 1022 — Fraud Notice Poster
- OFCCP-1420 — Equal Employment Opportunity is the Law — Know Your Rights Under the Recovery Act! (ARRA projects only)
- WISHA F416-081-909 — Job Safety and Health Protection
- F242-191-909 — Notice to Employees (L&I)
- F700-074-909 — Your Rights as a Non-agricultural Worker
- EMS 9874 — Notice to Employees (Emp. Security)
- Copy of approved Statement of Intent to Pay Prevailing Wages
- Copy of prevailing wage rates from the contract provisions

If Federal funds are involved, all of these posters are required, except that “Know Your Rights Under the Recovery Act!” is required only for ARRA funded projects. If only State funds are involved, the first four do not apply. After contract execution and before work begins, the Contractor should be given a package containing the appropriate required job site posters. There are links to these posters on the State Construction Office website. This package should also be accompanied by either a written or verbal explanation of the contents and include notification that the Contractor, each subcontractor, and each lower-tier subcontractor will have to post a copy of the State L&I approved Statement of Intent to Pay Prevailing wages. This action shall be specifically noted in the project records.

1-2.2M Responsibilities When Working on Tribal Lands

Indian nations have the political distinction of being sovereign. This is different from being designated as having protected group status based on racial classifications. Being sovereign, tribes have the ability to create and enforce tribal ordinances such as Tribal Employment Rights Ordinances (TERO). These are legal requirements pertaining to work within the boundaries of the reservation which are enforced by the respective tribes. When a contract includes work on a reservation, the project should include a general special provision “Indian Preference and Tribal Ordinances” that alerts the contractor to the possibility that TERO requirements may apply and provides a contact person for the tribe. The provision also reminds the contractor to bid any costs associated with TERO compliance into associated items of work. TERO requirements may take a variety of forms, some of which are listed in the noted provision. The provision also notes that complying with TERO requirements shall not be a violation of the contract equal employment opportunity requirements. The end result is that the contractor is expected to comply with TERO requirements as they would any other legal obligations. The underlying intent is to reduce Indian unemployment and most tribes are willing to work with contractors to best meet this goal. We want to avoid creating any contractual requirements that interfere with their ability to do so. Our role is to assist in communication but not become involved in determining or paying the tax.

1-2.2N Responsibilities Following Unanticipated Discovery of Cultural Resources

Given the wealth of historical and archeological resources found in Washington, the Project Engineer should be familiar with the requirements of the National Historic Preservation Act (NHPA), *Standard Specification* 1-07.16(4), and any contract specifications regarding the discovery of cultural resources. The Project Engineer should discuss these requirements with the Contractor and WSDOT staff at the Pre-Construction Conference. These resources include, but are not limited to:

- Human skeletal remains,
- Anthropogenic soil horizons (areas showing the influence of humans on nature), occupational surfaces (areas showing evidence of human activity or habitation), midden (refuse heap), etc.,
- Areas of charcoal or charcoal-stained soil and stones,
- Stone tools or waste flakes (i.e. arrowheads or stone chips),
- Bones, burned rocks, or other food related materials in association with stone tools or flakes,
- Clusters of in cans or bottles,
- Logging or agricultural equipment more than 50 years old.

The Project Engineer will include a project-specific unanticipated discovery plan (UDP) in the project provisions for use by the Contractor. A sample of may be found at <http://www.wsdot.wa.gov/eesc/environmental/culres/default.htm>. The Cultural Resources Office, at the Headquarters Environmental Services Office, will assist with completing the plan.

1-2.2N(1) Discovery of Human Skeletal Remains

The following guidance is given to assist the Project Engineer when construction activities cause disturbance to human skeletal remains. All human skeletal remains, which may be discovered, shall at all times be treated with dignity and respect.

Should any WSDOT employee, contractor, or subcontractor believe that he or she has discovered human skeletal remains; the following steps shall be initiated:

1. Ensure that all work adjacent to the discovery has ceased. The area of work stoppage shall be adequate to provide for the total security and protection of the integrity of the human skeletal remains.
2. The Project Engineer shall:
 - a. Notify the Region Construction Manager.
 - b. Immediately notify the local coroner and the local sheriff, or other appropriate law enforcement official, requesting that a person who is competent and qualified to identify human skeletal remains be present. Do not call 911 or the media.
 - i. No persons other than the coroner or proper law enforcement personnel, WSDOT Cultural Resources staff, SHPO (State Historical Preservation Officer), and DAHP (Department of Archeological and Historic Preservation) staff will be authorized direct access to the discovery location. This access must comply with all safety and security procedures.
 - ii. The coroner will make a determination as to whether the human skeletal remains are forensic (evidence of a possible crime) or non-forensic (historical). If the human skeletal remains are determined to be forensic, the coroner will retain control of the human skeletal remains and the discovery site will be treated as a crime scene. If the human skeletal remains are determined to be non-forensic, the coroner will notify DAHP.
 - iii. The DAHP state physical anthropologist will make the initial determination as to whether the human skeletal remains are of Native American ancestry. If the human skeletal remains are determined to be of Native American ancestry, DAHP will notify the affected tribe(s).
 - c. Notify the WSDOT Cultural Resource Manager at HQ Environmental Services, who will notify:
 - i. FHWA Area Engineer or Environmental Program Manager
 - ii. State Historic Preservation Officer (SHPO)

- iii. WSDOT Tribal Liaison Office. The WSDOT Tribal Liaison Office will contact the affected tribe(s) and notify them of the unanticipated discovery.

- iv. Region Environmental Manager

3. If the human skeletal remains are determine to be of Native American ancestry, tribal access will be allowed to the designated representative(s) of the affected tribe(s). WSDOT and FHWA will make a good faith effort to accommodate requests from affected tribe(s) to be present, prior to implementation of mitigation measures. The Project Engineer, WSDOT Cultural Resources, SHPO, and the affected tribe(s), in consultation, will determine what treatment is appropriate. If disinterment of Native American remains becomes necessary, FHWA, WSDOT, SHPO, and the affected tribe(s) will jointly determine the final custodian of the human skeletal remains for re-interment.

1-2.2N(2) Discovery of Other Cultural Resources

The following guidance is given to assist the Project Engineer when construction activities cause the disturbance of cultural resources, other than human skeletal remains.

Should any WSDOT employee, contractor, or subcontractor believe that he or she has uncovered a cultural resource, at any point in the project, the following steps should be initiated:

1. Ensure that all work adjacent to the discovery has ceased.
2. Immediately notify the Project Engineer. The Project Engineer shall immediately notify:
 - a. The Regional Construction Manager
 - b. The WSDOT Cultural Resource Manager at HQ Environmental Services who will notify:
 - i. FHWA Area Engineer or Environmental Program Manager
 - ii. State Historic Preservation Officer (SHPO)
 - iii. WSDOT Tribal Liaison Office.
 - iv. Region Environmental Manager
3. Ensure that the area of work stoppage is adequate to provide total security and protection of the integrity of the resource. Vehicles, equipment and unauthorized personnel will not be permitted to traverse the site, nor will work resume, until treatment of the cultural resource is completed.
4. All archeological deposits discovered during construction are to be treated as if they are eligible for inclusion in the NRHP (National Register of Historical Places). Intentional disturbance of archeological sites without a permit from DAHP is prohibited by RCW 27.35. Disturbance of Indian burials, cairns and glyphs is prohibited by RCW 27.44.
5. If cultural resources are discovered, but additional project effects to the resource are not anticipated, project construction may resume, away from the site of the discovery, while documentation and assessment of the resource proceeds.

1-2.3 Construction Traffic Control

1-2.3A Public Convenience and Safety

1-2.3A(1) General

Under the many special conditions encountered where traffic must be moved through or around construction operations, serious problems of traffic control can occur. Most conditions are temporary and are, therefore, dangerous and difficult to deal with because they are unexpected and not in accordance with the normal pattern of highway traffic. Section 1-07.23(1) of the *Standard Specifications* requires the Contractor to conduct all operations with the least possible obstruction and inconvenience to the public and to provide adequate safeguards, safety devices, protective equipment, and any other needed actions to protect the life, health, safety, and property of the public. The responsibility to comply with these requirements is the Contractor's. It is the Project Engineer's responsibility to ensure that the Contractor complies.

1-2.3A(2) Work Zone Clear Zone (WZCZ)

When a project requires traffic control, a Work Zone Clear Zone (WZCZ) shall be established and will apply during both working and non-working hours. During non-working hours no equipment or materials shall be within the WZCZ, unless it is protected by permanent guardrail or temporary concrete barrier (location and installation to be approved by the Project Engineer). During working hours, unless protected as stated for non-working hours, only materials or equipment absolutely necessary to construction shall be allowed in the WZCZ or allowed to park on the shoulder of the roadway.

The minimum clear zone distance, measured from the edge of traveled way, shall be based on the posted speed as follows:

| Posted Speed | Distance From Traveled Way |
|-------------------|----------------------------|
| 35 mph or less | 10 Ft. |
| 40 mph | 15 Ft. |
| 45 to 55 mph | 20 Ft. |
| 60 mph or greater | 30 Ft. |

Any deviation from these requirements shall only be allowed if the Contractor has requested the deviation in writing and the Engineer has provided written approval. The Region Traffic Office should be contacted to help evaluate the deviation and determine if the requested deviation is approvable.

1-2.3A(3) Temporary Breaks in Limited Access for Construction

The Federal Highway Administration (FHWA) cannot delegate its approval authority to add access points to existing limited access controlled Interstate facilities through the WSDOT-FHWA Stewardship Agreement. The FHWA has granted approval to break limited access in order to gain access to the worksite from adjacent properties. This approval was granted through the FHWA approval of *Standard Specification* Section 1-07.16. This approval does not extend to allowing the contractor to use this access to

merge construction vehicles and equipment with public traffic in the traveled way, auxiliary lanes or shoulders. It is therefore necessary to seek approval from the FHWA when proposing to break limited access and merge construction vehicles with public traffic in the traveled way, auxiliary lanes, or shoulders.

Standard Specification Section 1-07.16 allows the contractor to access the worksite from adjacent properties but does not allow the contractor to merge construction vehicles or equipment (including contractor workforce vehicles of any type) from that access with public traffic. *Standard Specification* Section 1-07.23 allows the Interstate highway system to be accessed through existing facilities or through access points allowed within the contract only. These access points allowed in the contract will either be in the form of site specific traffic control plans or by contract provisions included in the contract documents.

If the contractor proposes to merge construction vehicles with public traffic in the traveled way, auxiliary lanes or shoulders and the contract contains the General Special Provision (GSP) that allows this access, then the contractor shall submit a site-specific plan for traffic control in accordance with the MUTCD Part VI. The Region Traffic Engineer should review this plan and it should be submitted to FHWA.

During construction on Interstate projects the Project Engineer will notify the FHWA Area Engineer by sending them a copy of the approved vicinity map showing the location of the access break and site-specific traffic control plan. FHWA approval of a PS&E containing this GSP constitutes approval of access from adjacent properties to the traveled way, auxiliary lanes or shoulders. Consultation with Region and Headquarters Design offices and approval by FHWA must occur prior to deciding to include this GSP in a contract on Interstate facilities.

While some contracts may not contain provisions for breaking limited access for construction and for merging of construction vehicles with mainline and/or interchange ramp traffic, the contractor may request one. If the Region agrees and the project is on limited access controlled Interstate, the FHWA Area Engineer shall be contacted for approval. The contractor shall submit a vicinity map showing the location of the access break, a site-specific plan for traffic control in accordance with the MUTCD Part VI, and the duration for which the accesses will be in operation. On non-interstate limited access controlled facilities, approval will be required by the Region. If approval is granted and the facility is a limited access facility, the GSP will be added to the contract by change order. On managed access roadways the Project Engineer, with Region concurrence, has approval authority to grant the contractor temporary access, in accordance with the *Standard Specifications*.

1-2.3B Public Information and Customer Focus

Most drivers still have the expectation of proceeding to their destination with little or no delay even though traffic conditions on many of our highways are deteriorating, primarily due to increased traffic volume. This increased volume may create congestion, delays, accidents and

aggressive driving during normal daily operation. Highway construction will usually require a more restricted roadway to accommodate work zones and can further reduce traffic mobility and safety. Even some of our lower volume rural highways can present a challenge due to factors such as drivers not expecting construction work and seasonal/recreational traffic increases. Construction and user delays present significant costs in addition to costs associated with crashes and worker safety. These delays and costs can be minimized by implementing a traffic control strategy based on traffic conditions and construction requirements, and which includes public information and customer focus considerations.

Our goal on every highway construction project should be to provide the best overall balance of work zone safety and traffic mobility while constructing quality highway projects. Much of our effort is directed at engineering responses to safety and mobility issues and is generally included in the contract requirements. Recent customer focused highway construction studies have shown that accurate and timely project information is a valuable element in an overall traffic control strategy. Advance planning and coordination between the project engineer and contractor is necessary to ensure that there is an opportunity to provide public information for all phases of the project that impact traffic. Proper use of public information and customer focused techniques will provide safety and mobility benefits that would not otherwise be gained, as listed below:

- Alert drivers to potential delays by advance notice through project signing and the news media that would allow drivers to take alternate routes, adjust scheduled trips and have better awareness of traffic impacts and how to avoid them.
- Provide benefits to the Contractor from reduced traffic volume and better driver awareness through fewer crashes, less material delivery delay, better worker safety, fewer complaints and overall public acceptance of the project.
- Achieve better driver acceptance, reduced aggressive driving and improved work zone credibility by minimizing delays and providing accurate and timely information.
- Consider innovative construction techniques and shorter term intense work stages with more severe traffic restrictions, such as weekend closures, if possible.
- Closely monitor traffic conditions when traffic is restricted to determine the need for any traffic control or work hour adjustments that would improve traffic flow. Specified working hours and the accompanying traffic restrictions are critical elements of the project traffic control strategy and should not be adjusted without proper traffic analysis.
- Maintain ongoing communication during the life of the project with local law enforcement, emergency services, local agencies, transit groups, affected local businesses, etc.
- Continue use of innovative devices such as portable, changeable message signs, project information signs with information phone number and highway advisory radio systems.

The Regional Construction Manager, Traffic Engineer, and Public Information Officer should be involved in the project traffic control strategy and may be able to offer assistance.

1-2.3C Work Zone Traffic Control

1-2.3C(1) General

The primary function of work zone traffic control is to move vehicles and pedestrians safely through or around work zones while protecting on-site workers and accommodating the contractor's construction operations.

All work is to be performed by the contractor under the contractor's control and supervision. All resources are to be provided by the contractor unless the Special Provisions of the contract specifically states that the department will provide some resource(s), what those resources will be and how they are to be utilized. Such provided resources will be placed in the contractor's control to be used in the contractor's operation. Any additional resources provided to the contractor during the project should be accompanied by a change order to the contract and, where appropriate, a price reduction.

The "General" requirements for traffic control (Section 1-10.1) address the responsibility to provide adequate traffic control measures at work zones as follows:

- No work shall be done until all necessary signs and traffic control devices are in place and/or conflicting and confusing signs are covered.
- If the Contractor does not provide necessary traffic control, WSDOT may do it and deduct the cost from the Contractor's payments.
- The Contractor is responsible regardless of whether or not WSDOT orders, furnishes, or pays for necessary traffic control.

It is important for the Project Engineer to ensure that the Contractor has an approved traffic control plan in place and implemented providing all necessary signs and other traffic control devices so that the traveling public is aware of all deviations from the normal traffic conditions and is furnished adequate direction and guidance to permit safe travel through the construction area.

WASHINGTON STATE PATROL (WSP) TRAFFIC CONTROL ASSISTANCE

Washington State Patrol (WSP) troopers may fulfill two roles on a construction project. In the first case, troopers may be dispatched to participate in the Contractor's traffic control activity, perhaps as Flaggers or Spotters, or to perform rolling slowdowns. The WSP role will be defined in the contract provisions.

WSDOT has an agreement, GC5080, with the Washington State Patrol (WSP) for that agency to provide troopers and vehicles to help with traffic control on construction projects. WSP traffic control assistance is considered an enhancement to the required work zone traffic control and should be reserved for those work zones that have unusual hazards or a high degree of worker exposure to traffic, which cannot be addressed by traditional traffic control means.

The Project Engineer should ensure that good communication is maintained with WSP troopers assigned to the project and that the appropriate traffic control strategy is applied. On each shift of WSP traffic control assistance, Form 421-045, WSP Field Check List, shall be filled out. WSDOT will fill out the top portion of the form and give it to the WSP trooper on the project to complete. At the end of the officer's shift, the completed form shall be returned to WSDOT.

The Contractor shall direct the activities of the WSP troopers assigned as a labor resource provided by the State.

Instructions for WSP assistance are in *Traffic Manual* M 51-02, appendix 5A.

The second case of WSP involvement is in the area of enforcement. In this case, the troopers are not considered to be a State-provided resource and do not participate in the Contractor's traffic control work. When this situation occurs, WSP is present (at WSDOT expense) to provide enhanced, increased and visible enforcement of all traffic regulations, including those installed by the Contractor in the course of the work.

Enforcement officers are simply doing more of what they usually do. Their presence or lack of presence is due to administrative decisions by the department and WSP that are completely independent of the contract. They are not to be considered a provided resource, there shall be no entitlement to their services and neither the Contractor nor the Project Engineer shall direct their activities.

As stated above, a mid-project decision to provide troopers would be a change order. To be fair to unsuccessful bidders, such a change would need a price adjustment if nothing else had changed.

1-2.3C(2) Traffic Control Management

GENERAL

"Traffic Control Management" (Section 1-10.2) addresses the requirements and duties of the Contractor's management personnel responsible for traffic and the Traffic Control Supervisor (TCS). The Contractor has the responsibility for managing traffic control and providing safe traffic control measures that are appropriate for the type of work and consistent with the requirements of the contract plans and specifications. The Contractor's traffic control work is a contract activity. Just like other contract activities, it is associated with pay items. The activity must be inspected for adequacy and conformance with the contract. Once it is performed and inspected, associated contract items must be measured and paid. Traffic management actions affect not only the Contractor's work operations, but also those of subcontractors. The process for coordinating and approving those actions must be well defined and consistent with the contract requirements.

Contractor management and the TCS work together with the Project Engineer and WSDOT's traffic control contact person to address traffic control issues as the work progresses. Planning and coordination of the Contractor's work efforts with appropriate traffic control measures are the primary responsibilities of contractor management. It is also the

responsibility of management to ensure that any adopted State-provided or approved Contractor-proposed Traffic Control Plans (TCPs) needed to implement the contract work operations are provided to the TCS and that any necessary resources to implement the TCP are available.

TRAFFIC CONTROL SUPERVISOR

The TCS ensures that the traffic control measures shown on the approved traffic control plans (TCPs) are properly implemented, operating, and documented on the project. The Contractor's TCS may not be required full time on the project, but is required to perform all the duties required by the specifications. When the Contractor is working multiple shifts, it may be necessary to have more than one person assigned to the role.

In addition to the Contractor's responsibility to designate a Traffic Control Supervisor, WSDOT may designate a DOT employee who is qualified, but not necessarily certified, to serve as the State's traffic control contact. It is intended to have qualified, trained representatives from both the Contractor and WSDOT work together to achieve safe traffic control operations on the project.

Among the duties of the Project Engineer in the area of Traffic Control are the following:

- **Communication:** About the planned work, traffic control needed and adjustments to the approved Traffic Control Plan. During the work, to stay aware of changes, events and issues.
- **Monitoring:** The activities of the Contractor TCS and traffic control workers. The status of signs and control devices. Conformance with specifications and requirements.
- **Documentation:** Obtaining and reviewing daily reports. Handling Traffic Control Plans and their approvals.
- **Coordination:** With adjacent projects, with DOT Traffic offices, notices to the media.

The Project Engineer may assign these duties in any manner. It would make sense to include the State's traffic representative in these activities.

When reference is made to the "Traffic Control Supervisor (TCS) in these provisions or in the *Standard Specifications*, it shall mean the Contractor's Traffic Control Supervisor unless stated otherwise.

TRAFFIC CONTROL PLANS

"Traffic Control Plans" (Section 1-10.2(2)) addresses the requirements of Traffic Control Plans (TCPs). The Contractor must either adopt the TCPs appearing in the contract or propose modified TCPs to be used for the project. The Contractor must submit proposed modifications to plan TCPs or alternate plans at least ten calendar days in advance of the time the traffic control will be required. Approval of these plans must be obtained before the work can begin.

The possibility of alternate plans is covered by the contract. No change order will be needed because of that reason. However, if a price adjustment is needed then a change order will be necessary to accomplish that. We would allow additional payment, either through added units or revised

lump sums, only if the original contract TCP was shown to be inadequate or in the case of traffic control needed for another change in the work. If the proposal is only for contractor convenience or preference, then a discussion of no pay for added traffic control or a credit for less traffic control would be appropriate. If the contractor should balk at this, the response could be “build according to plan.”

Minor modifications to the TCP may be made by the Traffic Control Supervisor to accommodate site conditions. Modifications or adjustments to the plan must maintain the original intent of the plan. When there is a change in the intent and/or substantial revisions are needed, a revised TCP shall be submitted for approval through the TCM to the Project Engineer. The Regional Traffic Office should be consulted when this situation occurs. Again, changes may call for a formal change order.

Traffic Control Plans should not only address all work zones and standard devices and signs but should also address issues such as:

- Conflicting or temporary pavement markings
- Maintaining existing operational signs and covering conflicting signs
- Staging requirements
- Temporary vertical or lateral clearance restrictions
- Temporary work zone illumination
- Consistency with any existing work hour restrictions
- Position of positive barriers for traffic hazards or worker protection
- Vertical drop-offs
- Work zone access
- Intersection or access control (traffic signals, road approaches)
- Pedestrians and bicycles
- Work zone capacity and related mobility impacts

If the Contractor’s method of operation or the work area conditions require other than minor modification of the specific TCP appearing in the contract or any of the TCP’s previously designated and adopted by the Contractor, the Contractor shall submit a proposed modification of the TCP for approval. If the Contractor’s proposed modifications comply with the MUTCD requirements and are consistent with contract requirements as well as State and Region policy, the Project Engineer may approve these proposed modifications (perhaps utilizing a change order, if appropriate.) If the Contractor’s proposed modifications do not comply with the MUTCD requirements, the Project Engineer should consult with the Region Traffic Engineer.

Any Contractor proposed TCP or modifications to an existing TCP should be evaluated for their affects on work zone safety and mobility. The Project Engineer should refer to the guidance in the *Design Manual* Chapter 1010 Work Zone Safety and Mobility when evaluating how the new TCP works within the projects overall Transportation Management Plan (TMP).

If there is any doubt that the proposed TCP complies with the MUTCD or provides for the safe movement of traffic, the Project Engineer shall consult with the Region Traffic Engineer or the Region Construction Manager.

CONFORMANCE TO ESTABLISHED STANDARDS

“Conformance to Established Standards” (Section 1-10.2(3)) addresses the requirements for standards and condition of signs and all other traffic control devices. In addition to standards established in the latest adopted edition of the “*Manual on Uniform Traffic Control Devices*” (MUTCD) and/or as specified in the contract plans, all traffic control devices shall meet the crashworthiness standards of the “National Cooperative Highway Research Project, 350” (NCHRP 350). There are four categories of traffic control devices. Category 1 devices consist of small lightweight devices that generally do not present a hazard. Typical Category 1 devices are cones, tubular markers, and plastic drums with no attachments. The Contractor is required to keep the manufacturer’s certification document on file and available for inspection if needed. Inspection of certification documents by WSDOT is not routinely required but should be considered if operational or safety issues are observed.

Category 2 contains devices that are more hazardous due to their rigid construction, such as barricades, portable sign stands, and drums with lights. The collision test certification rules apply to all Category 2 devices. The Inspector should verify, and document, that all portable sign stands have an identifying label affixed. The label will display the FHWA approval letter designation and will appear similar to the image below.



Category 3 devices are fixed or substantial in mass and could cause significant damage to a vehicle or its occupants. Devices such as barriers, fixed sign supports, and TMAs are included in this category. WSDOT maintains a list of approved devices in this category on the QPL. Barrier is to be included in the contract plans to ensure that it meets WSDOT design standards.

Category 4 devices are typically trailer or truck mounted devices such as arrow boards, PCMS, portable signals, and portable lighting units. Crash testing is not required for these devices but care must be given to their placement to ensure that they do not pose an undue hazard to drivers, and that they meet the requirements of 1-2.3A(2) Work Zone Clear Zone.

1-2.3C(3) Traffic Control Labor, Procedures and Devices

1. TRAFFIC CONTROL LABOR

All traffic control labor must be trained to ensure safety in the work zone. Flaggers and spotters have additional requirements concerning flagging cards and apparel.

All flaggers and spotters working on WSDOT construction projects must have a valid State of Washington flagging card or a flagging card issued by the states of Oregon, Montana, or Idaho. Flaggers, spotters, and all other personnel performing the Work described in Section 1-10 of the *Standard Specifications*, are required to wear high visibility apparel as specified in Section 1-07.8 of the *Standard Specifications*. Other workers may certainly use this type of clothing, but doing so is not a contract requirement, unless they are performing work on foot within the work zone of a Federal-Aid highway.

Flaggers used as spotters to protect an exposed work crew may be considered appropriate if other worker safety measures are not feasible. Before the Project Engineer approves the use of a spotter not shown on a contract plan, careful evaluation of the hazards involved should indicate that the spotter could actually provide a safety benefit to the work crew without undue risk to the spotter.

FLAGGERS AND SPOTTERS

Typically, flaggers have the highest exposure to traffic hazards and are more frequently injured or killed than other workers. Flaggers should only be used when all other forms of traffic control are inadequate to control traffic. When flaggers are used, flagging stations must be shown on the TCP along with the required illumination, warning signs and devices. Flagger stations should be protected with a positive barrier, if possible. The flagger must also have in mind an “escape plan” to avoid errant vehicles. It is not allowed to use flaggers at locations, such as freeways, where their primary function of warning or directing traffic is ineffective or not intended. Use of flaggers to exclusively display the “SLOW” message is also not recommended and is, in fact, not required by the contract. The provisions call for a flagger with intermittent responsibilities to direct traffic to step back from the flagging station between tasks. Additional guidance on the use of flaggers is located in the “*Traffic Manual*” and the “*Work Zone Traffic Control Guidelines Book*.”

OTHER TRAFFIC CONTROL LABOR

For some projects, labor in addition to the assigned Flaggers and Spotters is needed for a variety of traffic-related tasks. Some of these tasks are listed in the provisions. Hours for this item are measured only for work on certain defined tasks (see Section 1-10.4(2)).

2. TRAFFIC CONTROL PROCEDURES

ONE-WAY TRAFFIC CONTROL

The major points to note in Section 1-10.3(2)A are:

- The provision does not limit one-way traffic control to treated bases, surface treatments, and pavements. This type of configuration can be used in other operations, such as grading, when appropriate.

- Line of sight is important in coordination of side roads and approaches with the limits of the one-way operation.
- When the contract does not stipulate a pilot car operation (i.e., bid proposal does not include such an item,) a new item can be established by change order if the Engineer deems that method of traffic control to be most appropriate; and
 - Contractor vehicles and equipment may utilize the closed lane in any manner. The one-way controlled open lane is for public traffic and, should the contractor use that lane, all rules and procedures applicable to public traffic will apply to the contractor. There will be no “wrong-way” travel in the open lane, no heavy equipment will join the public traffic and any additional traffic control will be performed according to approved plans only.
 - The contractor is required to plan and conduct operations so that the roadway can be reopened to two-way traffic at the end of the shift. If the nature of the work prevents this or if the work area is left in a condition unsafe for public two-way traffic, then the contractor must continue the one-way operation throughout the off-shift hours.

ROLLING SLOWDOWN

This can be a useful method of creating gaps in traffic for specific, very short-term non-repetitive activities such as sign bridge removal or utility wire crossing. Rolling slowdown traffic control operations are not to be used for routine work that can be addressed by standard lane or shoulder closure traffic control. The Contractor may implement a rolling slowdown on a multilane roadway, as part of an approved traffic control plan per *Standard Specification* 1-10.3(2)B. The key is planning and communication. If all goes well, the gap will arrive at the site and be of long enough duration that the activity can be completed. If this breaks down, the contractor must undertake the most expeditious method of restoring the open roadway. If demobilizing and pulling off is faster than finishing the task, then demobilizing is the path that will be followed, without regard to cost, efficiency or schedule.

LANE CLOSURE SETUP/TAKEDOWN

The use of truck-mounted attenuators (TMA) with arrow boards is required by the provisions. This combination is to be used during the transition from open lane to closed lane. Once a lane is closed, the TMA may be removed, leaving the arrow board alone.

MOBILE OPERATIONS

The key to this operation is to keep the traffic control equipment effectively close to the work and moving to match the work operation. Two traffic protection devices are used. One is a TMA/Arrow Board combination upstream of the work. The primary purpose of this device is to protect the errant vehicle from fixed object collisions. The second device (preferably a TMA) is immediately adjacent to the work area. Its purpose is to protect the workers from the errant vehicle.

PATROL & MAINTAIN TRAFFIC CONTROL MEASURES

This activity is to observe, repair and maintain traffic control devices and layout. The provisions require an hourly visit to each device and layout. Depending on the extent of the control measures, more than one patroller may be required.

3. TRAFFIC CONTROL DEVICES

CONSTRUCTION SIGNS

The standard of these provisions is that the contractor provides all signs, posts and supports. If the special provisions do not promise that some or all of these will be furnished by the State, then the contract requires the contractor to do it all. All signs shall be constructed from either aluminum or aluminum composite materials.

“Do Not Pass” and “Pass With Care” signs are the responsibility of the Contractor. The provisions explain how to determine the number of these and that determination is to be made by the Contractor as well.

Construction Signs (Section 1-10.3(3)) divides construction signs into two categories, Class A and Class B, and lists the work required for the Contractor.

At no time should signs be left in traffic control position during periods when they are not necessary to traffic safety. Indiscriminate use of traffic control signs soon destroys public confidence and respect for the signs. Unnecessary traffic restriction and inconvenience tends to reduce the effectiveness of all signing and causes difficulty in enforcement by authorities. The Project Engineer should ensure that signs are removed or completely covered per *Standard Specification* 8-21.3(3) during the hours they are not needed, either before or after working hours and on nonworking holidays or nonworking weekends. Tripod-mounted signs in place more than 3-days in any one location, unless approved by the Project Engineer, shall be required to be post mounted to improve visibility, and to keep useable shoulders clear.

Signing for nighttime traffic is more difficult than that required for daylight hours. A review of the project signing should be made and recorded during the hours of darkness.

Signs and other traffic control devices should be shown on the traffic control plan (either State-provided or contractor-submitted) approved and in use and should be installed with adjustments for work zone and traffic conditions. The Contractor and WSDOT should ensure proper use and placement of signs and devices. For situations not addressed by the TCPs, the Project Engineer will determine who is responsible for preparing a revised TCP. Refer to the Work Zone Traffic Control Guidelines Book, MUTCD, or seek assistance from the Region Traffic Engineer for appropriate TCP revisions. A modified or new TCP may be needed if adjustments to signs and devices do not adequately address existing hazards or resolve observed traffic problems or accidents.

Judgment will be required when a traffic control plan is changed. The project engineer must determine if the change has arisen because of a flaw in the original plans or because of the contractor’s activities or preferences. In the first case, a change order, perhaps with compensation, may well be needed.

The remaining devices listed in the provisions are the following:

SEQUENTIAL ARROW SIGNS

PORTABLE CHANGEABLE MESSAGE SIGN

BARRICADES

TRAFFIC SAFETY DRUMS

BARRIER DRUMS

TRAFFIC CONES

TUBULAR MARKERS

WARNING LIGHTS & FLASHERS

TRUCK-MOUNTED ATTENUATOR

TALL CHANNELIZATION DEVICES

PORTABLE TEMPORARY TRAFFIC CONTROL SIGNAL

The specifications for these devices should be sufficient to explain their use and requirements.

1-2.3C(4) Measurement

Measurement is the key element of the new provisions, which now contain lump sum bid items. The provisions will define one of several pay item strategies, which will determine the measurements to be made.

First, the “normal” project with these provisions will contain items. The items are different from previous contracts and are non-standard, although several have very similar item names. Each of these is described below.

Instead of items, the project may be designated as a “Total Project Lump Sum.” This will be the case if the item “Project Temporary Traffic Control, Lump Sum” is included in the proposal. If this is the strategy of the project, then all measurement and payment provisions for all other pay items are deleted from the contract. When this occurs, then all temporary traffic control costs of whatever nature (everything defined in Section 1-10) are included in the lump sum.

The project may be a lump sum hybrid. In this case, the Total Project Lump Sum item will be present, but the provisions will reinstate one or more of the deleted standard items. If that happens, the measurement and payment of the reinstated item(s) will be separate from and not included in the lump sum.

These are the items and a discussion of the features of the measurement spec for each:

Traffic Control Supervisor (lump sum). Previously paid by the hour, this item is now a fixed cost. Overtime is not considered, a second TCS for a night shift makes no difference. This lump sum status will likely cause

TCS to become a part of change order negotiations. If the change does, in fact, require additional TCS work, then there would be entitlement. This will also apply to extended contract duration, as the TCS can be considered part of on-site overhead.

Flaggers and Spotters, (per Hour). This contract activity is separated from other kinds of traffic control labor. It is measured according to the hours that an approved flagging station is manned. We will not count minutes and seconds; time will be rounded up to the half hour as specified in Section 1-09.1. If a station is manned, but full-time presence of the flagger is not necessary (trucks entering roadway, equipment crossing) then the flagger is expected to step back out of harm's way until the next event. No deduction will be made for this stepping back, provided the flagger can not be assigned to other duties while waiting. In measuring flagging, disregard overtime, split shifts, union rules for show-up time, the trade classification of the flagger and any other payroll issues. The flagging is a service that is provided and paid by the hour. It is only peripherally related to the flagger's paycheck.

Spotters may be used when required to improve safety. Spotter stations must be shown on the TCP and approved. Once approved, the item will be measured when the approved station is manned. The same rules apply to the non-relationship between Spotter payment and the paycheck of the spotter employee.

Other Traffic Control Labor (per Hour). There are other duties for traffic control labor besides flagging and spotting. Some of them are included in this item for separate measurement. If one of the activities listed in the provision is provided, then measurement of that activity is appropriate. Only the hours that the activity is performed will be measured. Again, this is not a payroll measurement.

Note the limit under patrolling and maintaining. No matter how many people are involved in this activity, measure only one hour for each hour that each approved route is operated.

Another little feature shows up under the last bullet (Installing and removing devices). Time spent ahead of the setup marking layout points on the shoulder or getting signs ready in the yard will be measured under this item.

Do not succumb to pressures to add other hours to this item. As the payment spec for "Other Temporary Traffic Control" states, all costs not compensated by other items are covered there.

Construction Signs, Class A (per sq. ft.) to qualify for payment under this item, the sign must be designated as Class A on an approved TCP or be directed installed by the Engineer and designated as Class A at the time of direction. After-the-fact re-designations of signs that have been originally thought to be Class B should not be considered.

Other Unit Price Items. The traffic control provisions limit unit items to major devices. These include Sequential Arrows, Changeable Message Signs, Portable Signal and Truck Mounted Attenuators. The measurement and payment requirements for these are similar or identical to those which have been in use for some time and are relatively straightforward.

One point to make is with the force account item for "Repair Truck-Mounted Attenuator. Because this is a temporary installation and not a part of the permanent work, the Third Party Damage item does not apply and that is why a separate force account is established. If the damage was caused by a third party, the department may well be able to recover the costs paid to the Contractor under this item. The Project Engineer should take steps to protect the department's interest and involve the Maintenance, Accounting and Risk Management offices to initiate the efforts to recover costs.

1-2.3C(5) Payment

The payment provisions of the new specifications are intended to provide a mechanism that accounts for all of the Contractor's costs for temporary traffic control. The total project lump sum item is self-explanatory. There is no additional payment unless there is a change order.

If the job contains items, the pay definition for each describes the limited portion of the Contractor's costs that are covered by each item. The summary lump sum item (Other Temporary Traffic Control) is written to be a catchall cleanup that lets nothing escape for "additional compensation" discussions.

Watch out for change orders. A principal concern over lump sum items is that work will be added that is not required by the original contract and no mechanism exists to increase traffic control payment. This can be straightforward in identified changes, merely becoming an additional aspect of the negotiation. More troubling are constructive changes, which are not written, but which do end up in negotiation. An "overrun" of asphalt pavement to add a few driveways may be a convenient way to do field decisions, but may also create a dispute over the related traffic control costs (not to mention the dispute about the changed nature of the paving.).

1-2.3C(6) Construction and Maintenance of Detours

Construction zone detours will normally be detailed in the plans. When detours not shown in the plans are required, the design will likely be done by the construction office under the direction of the Project Engineer and requirements of the MUTCD. If the detour is a full-fledged roadway, design and traffic reviewers should check the design. Short-term minor detours may be installed and operated without formal review, but the Project Engineer must be satisfied that the facility is suitable and safe for traffic use.

Existing pavement markings on asphalt pavement shall never be merely blacked out with oil or paint; this is not allowed by the MUTCD. Rather, the striped and adjacent areas should be hydroblasted, or ground in a pattern different from the original marking until the marking is no longer visible. This change in pattern minimizes the possibility that the original marking will still be visible to drivers, especially at night or in rainy weather when covered-over stripes have a tendency to shine in contrast to the pavement. Temporary pavement marking tape, either for temporary lane marking or masking of existing markings may offer another option and approved removable tapes are listed on the QPL. Existing conflicting markings should never be allowed to remain in place. When markings remains from an alignment shift or the marking

goes under a device (like barrier), the existing marking must be removed in order to eliminate confusion to the motorist.

Temporary concrete barrier should be part of the plan design for positive protection of the work area. Barrier is not to be used as primary delineation to guide traffic, a combination of pavement markings and temporary channelization devices are to be used along with the barrier. Temporary barrier delineators must be maintained, and kept clean. When delineators become covered with grime or are damaged, they become ineffective. The condition and positioning of these devices should be checked daily.

1-2.3C(7) Road/Ramp Closures

When it is necessary to close a road, street, or ramp, the Project Engineer shall submit a request that includes the appropriate closure/detour plan to the Region Traffic Engineer in advance of the need. Per RCW 47.48.010, the Regional Administrator may close a road, street, or ramp.

With proper planning and implementation, road/ramp closures can be an effective and safe method of traffic control. As required by RCW, notice of the closure shall be published in one issue of a newspaper in the area in which the closure is to take place. Signs indicating dates and times of the closure shall be placed at each end of the section to be closed on or before publishing the notice in the newspaper. Publishing the notice and placing of the signs shall be a minimum of three days in advance of the closure. Advance notice using local radio, portable changeable message signs or HAR may be effective in diverting traffic from the closed or impacted locations.

Coordinate with the Region Public Information Officer for assistance with public notification.

In cases of emergency, or closures of 12 hours or less, the road, street, or ramp may be closed without prior notice to the public. If possible, a notice should be posted one working day in advance of the closure.

1-2.3D Speed Reductions

If speed reductions are considered, the Project Engineer shall follow Executive Order E1060.00 and the guidance found in *Traffic Manual* Chapter 5, Appendix 5B.

1-2.3E Records of Construction Signing, Collisions, and Surveillance

Due to the increased damages being awarded by the courts for improper signing, it has become more important that detailed records of signing and delineation be continuously maintained on every project on sections of highway within the construction limits under traffic. The following are recommended procedures and methods of recording the signing on the project:

- Use extensive photographic, digital or videotape records.
- The Contractor's signing must adhere to the TCP, and the records must confirm that the sign installation is checked against that plan. The Regional Traffic Engineer should only be involved in significant changes to TCPs and need not be involved in minor adjustments.

- Documentation of the Contractor's activity for traffic control, including signing, should be completed by the Contractor's Traffic Control Supervisor (TCS). In accordance with the *Standard Specifications*, the TCS must maintain a daily project traffic control diary. DOT Forms 421-040A, "Contractor's Daily Report of Traffic Control- Summary", and 421-040B, "Contractor's Daily Report of Traffic Control Traffic Control Log," are provided to the Contractor for this purpose.

The Summary report will typically contain a brief description of the daily activities of the TCS with expanded details of any important happening such as traffic collisions, meetings, decisions, or rapidly deteriorating conditions of traffic or weather.

The Summary report is usually sufficient to verify the location and status of Class A signs once they are installed.

- The Traffic Control Log report is used to specifically identify all details of each Class B work zone setup. This includes identification of specific signs used, location of the signs, location of flaggers, location of the work zone, the time it was set up, and the time it was removed. Additional information includes cone layout, if used, comments about piloted traffic, and comments about the relationship of the setup to an approved traffic control plan.

The Project Engineer should make an effort to become aware of any traffic collisions that occurs within the project area. Thorough records should be maintained about the collision, including site conditions and the status of signing and other traffic control measures. When an incident is investigated by the WSP, do not move signs until released to do so by the trooper. When inspections are made of the work zone, either by project or region personnel, the documentation of these inspections should be maintained in the project files along with responses to any action items that resulted from the inspection.

1-2.3E(1) Work Zone Safety and Mobility

In keeping with the above recommendations, the Project Engineer should utilize the information obtained from traffic control reports, collision reports, and other field observation in order to better manage Work Zone impacts. This will allow the Project Engineer to implement any necessary changes to traffic control in order to increase safety and to enhance mobility through the work zone.

At the completion of each project, the Project Engineer should review the traffic control used on the project in order to identify trends, etc. that may be used to improve Work Zone practices or strategies. This information should be summarized and provided to the Region Traffic Office for inclusion in annual reports.

1-2.3F Resources for Traffic Control and Work Zone Safety

The following information may provide additional guidance and more specific detail. Also, this list includes the staff, reference documents and manuals mentioned throughout Section 1-2.3 of this manual.

- *Work Zone Traffic Control Guidelines*, M 54-44
- *Traffic Manual*, Chapter 5, M 51-02
- MUTCD Part VI
- Work Zone Safety Task Force Recommendations
- Quality Guidelines for Temporary Traffic Control Devices (ATSSA)
- Work Zone Traffic Control Supervisor's Notebook
- Highway Work Zone Reviews, 1997 (Work Zone Safety Task Force)
- Planning and Scheduling Work Zone Traffic Control (FHWA-IP-81-6)
- Executive Order 1060.00 Speed Limit Reductions in Work Zones
- *Traffic Manual* Chapter 5, Appendix 5A, WSP Work Zone Enforcement and Assistance
- Traffic Control Supervisor Evaluation - Final Report
- Region Construction or Traffic Office (Traffic Engineer or Work Zone Traffic Control Specialist) and Public Information Officer
- State Traffic Office (Mobility and Safety Manager or the State Traffic Control Engineer)

1-2.4 Application of Contract Provisions, Plans, and Specifications

1-2.4A Construction Contracts Information System (CCIS)

The CCIS system is a mainframe application designed to track contract information and generate reports for all WSDOT administered construction projects. The initial setup of contract information into CCIS is done automatically by using information in the CAPS system. However, after the initial setup, the project offices must enter the majority of the contract information into the CCIS system. The data entered is then maintained and stored on the mainframe.

Among other things, CCIS generates the Weekly Statement of Working Days and Change Orders, and tracks this information. The system creates the forms for these reports so a preprinted form is not needed. Following is a list of data that needs to be entered into the CCIS database over the life of the project:

A. Contract Information

This part of CCIS will contain general contract information.

Region administering contract

Region the contract is located in

Regional Administrator

Operations Engineer

Project Engineer/PE Org code

Begin and End mile post

County

Prime Contractor's local address, if applicable

Prime Contractor contact person

Prime Contractor D/M/WBE type if applicable

Prime Contractor ethnic code if applicable

Date of Statement of Intent to Pay Wages - Prime

Date of Contractor and Subcontractor/Agent Cert. for F.A. Projects

Date of Affidavit of Wages Paid - Prime

Date of Preconstruction Meeting Minutes

Date time started

Date work started

Date Orig. Progress Schedule approved

Date Last Supplemental Progress Schedule approved (if applicable)

Date of Substantial Completion (if no Substantial Completion granted, use Physical Completion date)

Date of Physical Completion

Final Estimate to Contractor

Date of Completion

Final Estimate to Headquarters (filled in by Region office)

Contract time – Original Authorized Working Days

B. Contractor Information

This part of CCIS tracks information about Request to Sublet and Affidavits of Amounts Paid.

Request to Sublet

Affidavit of Amounts Paid

C. ECR Tracking

This part of CCIS tracks the Contractor's training program, trainees, and MWDBE reviews

Training Program

Apprentice/Trainee Approval Request

DMWBE and EEO reviews

D. Change Orders

Change orders are created, printed and tracked in this part of CCIS. It is very important to keep the information current to facilitate correct tracking and reporting.

Approval (to proceed when granted)

CRIP Amount (if the change order is a CRIP)

A brief description of the change order (if the change order is a CRIP)

Date sent to Contractor

Date received from Contractor

Is there Surety consent

Date of Surety consent

Dates of approval and execution *Note: Line 4 "Date Executed" should only be used by Region or HQ.*

Change Order Voided (if applicable)

E. *Weekly Statement of Working Days*

The “*Weekly Statement of Working Days*” is a report generated by CCIS, based on information entered into the system by the project office. This report details the number of workable/unworkable days charged to a project, the reason a day is charged as unworkable, daily weather codes, the current status of contract days, and a summary of the week’s construction activity. The Project Engineer must ensure that the appropriate information is entered into CCIS on a weekly basis, a “*Weekly Statement of Working Days*” is generated, and a copy of the report is sent to the Contractor. Weekly statements shall cease when physical completion is granted, or when substantial completion is granted and all working days are expended.

Refer to the *CCIS Manual* for details on using the system.

1-2.4B Order Lists

Contract language requiring an order list can be found in Section 6-05.3(2), which addresses piling other than cast in place concrete and steel piles, and in Section 8-21.3(1), which addresses the determination of lengths of wood and steel sign posts. In other types of work, such as drainage, guardrail, etc., the actual layout will often result in quantities and lengths that vary from the plan estimates. A project engineer could choose to communicate this information in several ways, one of which could be the development of a formal order list. If an order list is used, extra care should be taken to ensure its accuracy. An alternate method of notice could also be a walk through with the contractor representative after staking.

1-2.4C Changes in the Work

• INTRODUCTION

WSDOT reserves the right, under *Standard Specifications* 1-04.4, to make changes to the work, work methods, working days, or quantities, as necessary to satisfactorily complete the project as originally intended.

Adding work beyond the original scope is, in essence, entering into a contract to perform work without the benefit of a competitive bid. There is a statutory (RCW 47.28.050) exception from the competitive bid requirement for work up to a value of \$7,500. If the value of the work is in excess of \$7,500 it is necessary to go through the competitive bidding process.

Change order work may impact the design criteria used to develop the project. The Project Engineer must be alert to this, and ensure that the Design Documentation Package is revised to reflect any such changes. The Project Engineer must contact the Region Project Development staff to obtain approval for the change, and for guidance in documenting and incorporating the change into the Design Documentation Package.

1-2.4C(1) Types of Changes

There are several categories of changes that may occur during the course of the work. A change may warrant additional payment to the contractor or a credit for the contracting agency. A change may also warrant an increase or decrease in the working days. Every situation is different. The *Standard Specifications* are very specific on what additional costs are eligible for adjustment. The balance of this discussion of types of changes is intended to help describe and explain the various categories of changes.

(I) VARIATIONS FROM ORIGINAL BID QUANTITIES

Contracts are set up with estimated quantities. Contractors provide unit prices and actual measured quantities are paid using those unit prices. What happens when the actual measured quantity varies from the estimated proposal quantity? The WSDOT *Standard Specifications* (Section 1-04.6) require that variations of less than 25% be performed without changes in the bid price, but that variations greater than 25% may qualify for a payment adjustment of the contract bid. This distribution of estimating risk is a policy of WSDOT and is also a Federal requirement for any project with Federal funds.

Variations may occur because field conditions cause a different quantity for the planned work than was envisioned during the estimating. Other variations may occur when work is added or deleted by change order and original contract unit items are included as the method of pricing the change order. Finally, quantity variations occur when work is added, deleted or revised without a formal change order (constructive change) and units with unit prices are the only measure of the revision. The work represented by a constructive change order is in fact work not anticipated at the time the contract was bid and executed, and as such would be outside of the requirements of *Standard Specifications* Section 1-04.6. In other words, you cannot deny a payment adjustment based solely on the fact that the accepted quantity of a bid item is within 25% of the original proposal quantity.

As discussed below, quantities included in formal change orders are excluded from consideration of quantity variations. The project engineer who allows constructive changes without formal documentation may find an additional negotiation waiting when final adjusted quantities are calculated and compared with the original proposal quantity.

A unit bid price consists of four different parts. First, and most obvious, are the costs of labor, equipment, materials and services needed to accomplish the work. These are the “direct costs” involved and they vary directly with the amount of work. Second are the variable overhead costs, such as field supervision, field support items (phones, computer rental, payroll clerks, sanicans, etc) whose amounts will vary along with the direct costs. Third, and more difficult to assess, are unavoidable, distributed, fixed overhead costs. These are typically long term and exist whether the quantity varies or not. They include things like home office costs, field trailer setup, long term equipment rentals and other fixed costs. These are typically distributed to the project by allocating them to the plan quantity. Fourth, and finally, the unit price will include some amount for profit.

[1] Section 1-04.6

The standard contract provision calls for the calculation of an adjusted final quantity. This is the method of revising the final measured quantity to allow for proposal item quantities included in agreed change orders. Unit prices as originally bid will be utilized if the adjusted final quantity is more than 75% of the original proposal quantity and not more than 25% greater than the original proposal quantity.

If the final adjusted quantity is outside these limits, then either party to the contract may initiate a renegotiation. If neither party does so, then unit prices will apply to the entire measured quantity of the item. Neither of these actions would be a change to the contract, as the provisions already allow a price change. A formal change order document might well be initiated to show the agreement, however, and would be the mechanism to create new prices.

If a negotiation is initiated, the provision calls for a new price for the quantity in excess of the 25% overrun or a contract price adjustment to compensate for costs and losses associated with an excessive underrun. The renegotiated price for the overrun portion is not an equitable adjustment and this is an important distinction. The new price is based upon actual costs experienced and is completely unrelated to the old bid price. The typical discussion about “what’s different from the bid work and what number should be used to modify the bid price?” does not apply in this type of negotiation. The underrun compensation is an equitable adjustment, however, and much of the negotiation is related to the bid price and discussions of the actual work costs as opposed to the planned costs.

Other features of the provision include an exclusion of force account items and other items where an amount has been entered solely to provide a common proposal for the bidders. Consequential damages and lost profits are specifically excluded. The effect of any unbalanced allocation of overhead costs is also excluded from compensation under the provision.

Force accounts and calculated quantities are already taking actual costs into account for overruns. Because of the nature of these items, contractors are unable to allocate unavoidable fixed costs to them except as a share of the allowed markup. The contractor is aware of this provision at the time of bid and knows that this item will not be eligible for renegotiation in the case of an underrun.

Consequential damages are those which are separated from the project and which might be presented as part of a negotiation. “Because of your overrun, I was unable to start work on my other project and had to do that other work in the wintertime.” This *consequence* of the quantity variation is not compensable because of the wording of the provision. Similarly, the profit that the contractor might have made on some other work but for the need to perform the extra work in an overrun is also not compensable.

Unbalanced bidding might result in a significantly higher or lower price for an item than normal. It means that too much or too little of allocated overhead or other costs is assigned to the item. This is not a problem in a low bid situation when all items come in at plan quantity. The problem would arise if an unbalanced item were to be involved in an excessive

underrun. This provision allows the project engineer to evaluate this possibility during an underrun negotiation (remember that the overrun pricing takes care of the problem automatically by assessing cost and ignoring the bid price.)

Contract time may be affected by the first unit of overrun or underrun. It may be appropriate to add or delete working days; depending on how the quantity variation affects critical activities, as shown on the Contractor’s approved progress schedule.

[2] Negotiation Guidelines

{a} Adjusted Final Quantity the *Standard Specification* language is quite clear on this subject. Start with the final measured quantity, the number that would be included in the final estimate for the item. Review all change orders that have been approved and have been accepted by the Contractor (see Section 1-04.5 for a definition of contractor acceptance of change orders.) Identify change order increases in the item and subtract these from the final measured quantity. Identify change order decreases in the item and add these to the result of the previous subtraction. The result of these calculations is defined as the Adjusted Final Quantity.

Compare the Adjusted Final Quantity to the original proposal quantity. If the Adjusted Final Quantity is greater than 1.25 times the original proposal quantity, then the item is eligible for an overrun renegotiation. If the Adjusted Final Quantity is less than 0.75 times the original proposal quantity, then the item is eligible for negotiation of an equitable adjustment due to underrun.

{b} Renegotiation for Overruns the first analysis should be to determine, if possible, where and when the overrun took place. This is not necessarily the work done after the quantity of 1.25 times proposal was reached. In many cases, a review of the work will disclose which part of the project actually experienced the low estimate and the resulting extra quantity. This is more common in physical items that are visible and can be measured by weight or physical dimensions (Roadway Excavation, Culvert Pipe, Select Borrow, etc.) These are often detailed in the plans to the extent that actual work can be compared with the relevant portion of the proposal quantity. When actual overrun work can be identified and when records exist showing the resources utilized for that work, then those records can form the basis for the revised payment amount. In other cases, the item is a support function, often measured by time, where the plan segments cannot be separated for analysis. This is common in Flagging, Pollution Control items, etc. To analyze these, the only choice is often to look at the actual work that occurred after the threshold was reached and price it. A third method, where records are adequate, is to evaluate the actual costs for the entire item, and apply those only to the overrun units.

Regardless of method of determining direct cost, markups will be allowed. A good place to start would be the force account percentages described in Section 1-09.6. If the contractor is providing other records for overhead and profit, these can be used, if they are

reasonable. Any overhead items that are unavoidable, distributed fixed costs should be excluded. Remember that the Contractor has already been compensated for these one and a quarter times over.

The revised price will apply only to the units measured in excess of 1.25 times the original proposal quantity. The overrun units between the proposal quantity and the threshold will be paid, according to the terms of the contract, at the bid price.

{c} **Equitable Adjustment for Underruns** the adjustment for an underrun is limited by the contract terms to three factors. The first of these is an adjustment for any increase or decrease in direct costs that result solely from the reduction in quantity. The most common example of this type of cost is the learning curve. “By the time my crew learned how to do this work at this site with these specifications, we were done. They should have been able to apply these skills to an additional 30, 40 or 50 percent of the plan quantity. I experienced the least efficient units and missed out on the most efficient.” in negotiation, this might be demonstrated by production rates, by inspectors’ reports or by the agreed judgment of the negotiators. If such a condition did exist, then an agreed amount for inefficiency during the learning curve could be included in the adjustment.

The second factor has to do with the nature of the work actually done, when compared with the work shown in the plans. The most common manifestation of this is “You deleted the easiest units and left me with the most difficult,” or “You added units that were much more difficult than those shown in the plan.” Compensable, if true. Logic dictates that, if all of the work shown in the plans was performed and, if no work was added except by formal change order, then this factor can have no value. The work that was performed was what was shown in the plans and was what the Contractor bid. If, on the other hand, the project engineer has allowed constructive changes without formal documentation, then this factor could well come into play.

Finally, the negotiation should include a look at reallocation of undistributed unavoidable fixed overhead costs. The contractor has allocated these to 100% of the proposal amount. The bid price is firm as long as 75% of the units are measured and paid. If the final adjusted quantity is less than 75%, then the anticipated contribution of the units not performed (up to 75%) can be identified, negotiated and included in the equitable adjustment.

One final aspect of underruns: There is a reality that, if more units were paid up to the 75% threshold, then there would be no eligibility for negotiation. Because of this, there is a limit to the equitable adjustment. The total paid for the item, including units actually performed and the equitable adjustment cannot exceed 75% of the original proposal quantity, multiplied by the unit bid price.

(II) DELETION OF ITEMS

[1] **AUTHORITY to DELETE** As provided in Sections 1-04.4 and 1-08.10(2) of the *Standard Specifications*, WSDOT may cancel all or portions of work included in a contract. When deleting work that is condition of award (COA), be sure to also delete that work from the COA requirements by completing the condition of award portion of the change order in CCIS. An adjustment in working days may also be appropriate.

[2] **PAYMENT FOR REMAINING WORK** There are some limitations to payment that should be noted under *Standard Specification* 1-09.5. When work is decreased or deleted by the contracting agency, payment will only be for the costs actually incurred for partially completed work. No profit will be allowed for work that was not completed. Consequential damages are also not allowed. Consequential damages may include such things as: loss of credit, loss of bonding capacity, loss of other jobs, loss of business reputation, loss of job opportunities, etc. In the case of a portion of a lump sum item or partially completed unit items, the value of this work will need to be determined. It may also be necessary to negotiate a price adjustment for the work that was performed and paid using a contract unit price if there is a material difference in the nature of the accomplished work when compared to the nature of the overall planned work. Under certain circumstances when the contractor says “you eliminated all the easy work and left the difficult,” there may be entitlement to an adjustment.

In the event that the deletion impacts the critical path for the project, an adjustment in working days may also be appropriate.

[3] **PAYMENT FOR MATERIALS** When work is deleted from the project and the contractor has already ordered acceptable materials for such work, Section 1-09.5 of the *Standard Specifications* controls.

{a} **contractor restocks** the first and best method for disposing of the materials is to request that the contractor attempt to return the materials to the supplier at cost or subject to a reasonable restocking charge. If the materials are restocked then, in accordance with Section 1-09 of the *Standard Specifications*, the contractor’s actual costs incurred in handling the materials may be paid.

{b} **contractor purchases** If WSDOT cannot utilize the materials, the contractor may elect to retain them for other work. Once again, in accordance with Section 1-09 of the *Standard Specifications*, the contractor’s actual costs incurred to handle the materials may be paid.

{c} **state purchases and disposes** As a last resort, if the materials can not be disposed of at a reasonable cost to WSDOT, the Department may choose to purchase the materials from the contractor. There are some limitations that come with the use of federal funds that may require that the materials be purchased with state funds depending on the situation. The State construction office may be contacted for advice. If possible, such materials may be provided to a future contractor

(work with Design) or to Maintenance (work with the Regional Maintenance Office). If the materials cannot be used, they shall be disposed of as described in the manual for *Disposal of Personal Property* (M 72-91). Once again, in accordance with Section 1-09 of the *Standard Specifications*, the contractor's actual costs incurred in handling the materials may be paid.

(III) CONTRACT MODIFICATIONS

Changes in Materials, Work Method, or Work Sequence may or may not be a change to the contract. The determining factor is if the change is a modification of a specific contract requirement. If the contract includes language such as "recommends", "suggested", or "approved equal" associated with the item or allows the engineer to approve changes, then a change order is probably not required. In essence, this would not be a violation of the contract and therefore, does not require a change to the contract. A common situation is when the contractor proposes a change to a submitted manufacturer's recommendation, drawing or plan such as a falsework drawing or erection plan. Changes to those drawings/plans may be made by the same authority that approved them the first time. Once again, it is not a change to the contract.

(IV) COST REDUCTION INCENTIVE PROPOSAL (CRIP)

It is the policy of WSDOT to encourage our contractors to be innovative in planning and performing the work when a cost savings can be realized. When a contractor identifies such a savings and provides a significant portion of the efforts needed to develop the proposal, then WSDOT will share the resulting savings with the contractor. This policy is carried out through change orders containing Cost Reduction Incentive Payments. The Project Engineer should encourage CRIPs and seriously consider the mutual benefits of these proposals brought forth by the contractor as a partner in the contract.

[1] IS IT A CHANGE/CRIP? A proposal may include material and/or product substitutions, work method changes, work sequencing changes, etc., that normally take place during the construction of a project. Contractor proposals do not require change orders nor qualify as CRIPs when the change does not require modification of the contract. See the previous section "contract modifications".

[2] AGENCY CREDIT OR NO COST CHANGES (NOT A CRIP) the contracting agency is not obligated to accept a proposal which is not equivalent or superior to what is required by contract. However, if a contractor proposed change is acceptable and desirable to WSDOT, but is not equivalent or superior to what is specified by contract, then a credit should be considered as part of the change order. This type of change would not be considered a CRIP. The credit required would normally be 100 percent of the cost or time savings. If it is determined that contract time is not affected and that the cost differential is negligible or to the state's advantage, then the change might require a "no cost" change order. If, in the opinion of the evaluator, the State is not harmed and there is no windfall savings for the contractor, then a no-cost change would be appropriate.

[3] IDENTIFYING A TRUE CRIP

A CRIP might exist if:

- the change is the contractor's idea
- it offers, in effect, the same end result as what is specified in the contract
- savings will be achieved in dollars or time by its implementation

Qualifying actions by the contractor:

- accepts design risk of temporary features
- accepts risk of constructability
- makes a significant effort to develop the proposal
- employs an engineer to assist in development (indicator, but not required)
- prepares all documentation, presentations, and plans
- invests an appreciable amount of time

[4] DEVELOPMENT OF CRIPS Once a CRIP is identified and developed to the point of conceptual approval, it is treated in nearly the same manner as any other change order. There are some differences, such as the contractor's responsibility for preparing the documents, and there is a special method of calculating the incentive payment amount. In the interest of uniformity, the following guidelines are to be used for the evaluation of CRIPs submitted by the contractor:

General Requirements and Principles Applying to CRIPs:

- The proposed change must alter a contract requirement.
- The proposed change must result in a product that meets the intent of the original design.
- In the judgment of the evaluator, the ultimate life cycle costs to WSDOT shall not be unduly increased.
- The contractor agrees to substitute for deleted condition of award COA work.

Additional Requirements for Time Reduction CRIPs:

- The time saving is a direct result of an actual change in the design or method of work (simply adding more crews would not qualify as a CRIP).
- The original time for completion was realistic (an early finish of a job with an unnecessarily long time for completion would not be a CRIP).
- The project does not already have an incentive/disincentive clause (in that case, the cost of accelerating the completion is assumed to be included in the bid and a CRIP sharing of the cost is inappropriate).
- Liquidated damages penalties are not used to calculate savings
- Administrative/overhead cost savings enjoyed by either party as a result of a contract time reduction accrue to each party and are not used to calculate savings. (these savings can be recognized as an indirect benefit of the CRIP, as discussed later).

{a} **Step 1:** *concept approval* the first effort in development of a CRIP shall be to achieve concept approval. To this end, the contractor shall submit a written proposal to the Engineer for consideration. The proposal shall contain the following information:

- An explanation outlining the purpose of the change(s).
- A narrative description of the proposed change(s). If applicable, the discussion shall include a demonstration of functional equivalency or a description of how the proposal meets the original intent of the design.
- A cost discussion estimating any net savings. Savings estimates will generally follow the outline below under “Calculating the Incentive Payment”.
- A statement providing WSDOT with the right to use all or any part of the proposal on future projects without further obligation or compensation.
- A statement acknowledging and agreeing that the Engineer’s decision to accept or reject all or part of the proposal is final and not subject to arbitration under the arbitration clause or otherwise be subject to claims or disputes.
- A statement giving the dates the Engineer must make a decision to accept or reject the conceptual proposal, the date that approval to proceed must be received, and the date the work must begin in order to not delay the contract.

A separate copy may be sent to the Headquarters Construction Office to initiate tracking of the progress of the proposal. After review of the proposal, the Engineer will respond in writing with acceptance or rejection of the concept. This acceptance shall not be construed as authority to proceed with any changed contract work. Depending on the nature of the proposal, the review could include Region and Headquarters designers and, possibly, outside consultants. The completeness and quality of the proposal will have an effect on the time needed for the review. WSDOT will make every effort to expedite the review.

{b} **Step 2: formal approval** Concept approval allows the contractor to proceed with the work needed to develop the final plans and other information to support the ultimate preparation of a change order. To qualify for an incentive payment, the contractor will normally take the lead in the development effort. The Project Engineer is encouraged to provide whatever assistance is needed. The development of a CRIP is an example of partnering at work in a contract. The contractor’s submittal shall provide the Project Engineer with the following:

- Deleted Work — Calculated quantities of unit price work to be deleted. Proposed partial prices for portions of lump sum work to be deleted. Time and material estimates for deleted work in force account items.
- Added Work — Calculated quantities of unit price work to be added, either by original unit contract prices or by new, negotiated unit prices. Proposed prices for all new items to be negotiated.
- Contractor’s Engineering — Costs of engineering to develop the proposal shall be submitted. Costs of employees utilized in contract operations on a regular basis will not be included.
- Schedule Analysis — If the CRIP is related to time savings, a partial progress schedule showing the changed work. A discussion comparing this schedule with the approved progress schedule for the project.
- Plans and Working Drawings — All drawings and supporting calculations necessary to accomplish the work. Those drawings which include engineering calculations and features shall be prepared by a professional engineer licensed in the State of Washington and shall bear the professional engineer’s signature and seal.

{c} **Step 3; Preparing and approving The change order** the change order itself shall be prepared and processed in the same manner as any other change order. Accordingly, the change order must incorporate the terms of the agreement into the contract. Along with all of the components of a change, all CRIP change orders shall include the following:

- A statement that the Contractor accepts design risk of temporary features of the changed work.
- A statement that the Contractor accepts risk of constructability of the changed work.
- A statement providing WSDOT with the right to use all or any part of the proposal on future projects without further obligation or compensation.

Calculating the Incentive Payment in the interest of uniformity, all CRIP change orders shall include separate payment items as follows:

- Any deleted work, whether at contract prices or at agreed prices.
- Any added work, whether at contract prices or at agreed prices.
- The contractor’s engineering costs, reimbursed at 100 percent of the contractor’s cost.*
- The incentive payment to the contractor.*

*Where added work exceeds deleted work, but time savings make a viable proposal, these two items would be replaced by:

- WSDOT’s share of added cost to achieve time savings.
- The contractor’s share of savings from deleted work.

The final sum of these shall ordinarily be the savings to WSDOT. However, in some cases, savings may be offset by any increased inspection and administration costs, or augmented by intangible benefits, such as user benefits, or by indirect benefits, such as overhead and engineering savings in time reductions, or by theoretical savings, such as a CRIP that eliminates a large anticipated overrun in plan quantity. In these cases, the benefits would not be expressly reflected in the change document, but should be discussed in the justification letter.

Proposal Savings: The incentive payment shall be one-half of the net savings of the proposal calculated as follows:

$(\text{gross cost of deleted work}) - (\text{gross cost of added work})$
 $= (\text{gross savings})$

$(\text{gross savings}) - (\text{contractor's engineering costs}) -$
 $(\text{WSDOT's engineering costs}) = (\text{net savings})$

$(\text{net savings})/2 = (\text{incentive pay})$

WSDOT's engineering cost shall be actual consultant costs billed to WSDOT and extraordinary in-house personnel labor costs. Project personnel assigned to the field office or who work on the project on a regular basis shall not be included.

Cost to Achieve Time Savings:

$(\text{cost of added work}) + (\text{contractor's engineering costs})$
 $= (\text{cost to achieve time savings})$

$(\text{cost to achieve time savings})/2 = (\text{WSDOT's Share of Added Cost})$

If the timesaving proposal also involves deleting some work and, as a result, creates a savings for WSDOT, then the contractor would also receive one-half of the savings realized through the deletion.

{d} Authority to Proceed with Changed Work the need may arise to proceed with changed work before the change order is executed. WSDOT is willing to provide an approval, allowing the work to proceed, if the following criteria has been met:

- Concept approval has been granted.
- The necessary design reviews and approvals have been completed, including plans and specifications.
- The contractor has guaranteed, in writing, the minimum savings to WSDOT.

Such advance approval, if given, shall be in writing and shall constitute commitment by WSDOT to ultimate formal approval of the proposal. Where appropriate, the advance approval may contain a narrative formula of the elements to be utilized in the final cost negotiations. When work has begun under such an approval, detailed records shall be kept of the labor, equipment, and materials utilized and, if ultimate approval is not gained soon enough to provide prompt payment for the work, then an interim change shall be executed to allow partial payments.

{e} Problems Arising After the Agreement the contractor assumes the risk of constructability. However, there will occasionally be problems that arise while the work of the CRIP is being performed. These will be evaluated on a case-by-case basis. The controlling philosophy will be that we entered the CRIP as a team with the contractor and we will approach problems in a similar vein. If the problem is something that could not reasonably have been anticipated in the design work of the CRIP, then the risk shall be shared as will the cost of the solution.

{f} Proposed CRIP is not accepted If the evaluator decides to reject a CRIP proposal, the contractor will be notified in writing with an explanation. Copies of this notice, with an attached analysis of evaluation costs and any other factors, shall be provided to the Region Construction Manager and the Headquarters Construction Office.

(V) TERMINATION FOR PUBLIC CONVENIENCE

[1] **AUTHORITY to TERMINATE:** As provided in Section 1-08.10(2) of the *Standard Specifications*, WSDOT may cancel all or portions of the Work included in a contract. If the project is to be terminated in whole and contains Federal funds, FHWA must be notified and a discussion of Federal participation eligibility should take place prior to the decision to terminate is finalized. The authority to terminate a contract resides in the same position that is authorized to execute the project. Change order approvals, per the Change Order Checklist, are required for termination change orders.

[2] **COST ASSOCIATED WITH DELETED WORK:** The Contractor must submit a request for payment of costs associated with termination of the contract no later than 90-calendar days from the effective date of the termination. There are some limitations to payment that should be noted under Section 1-09.5 of the *Standard Specification*. When Work is deleted by the termination of a contract by the contracting agency, payment will only be for the costs actually associated with the termination. No profit will be allowed for Work that was not completed. Consequential damages are also not allowed. Consequential damages may include such things as loss of credit, loss of bonding capacity, loss of other jobs, loss of business reputation, loss of job opportunities, etc.

[3] **PAYMENT for MATERIALS:** When Work is deleted from the project by termination and the contractor has already ordered acceptable materials for such Work, payment for these materials may be negotiated in accordance with Section 1-09.5 of the *Standard Specifications*.

[4] **DELETION of CONTRACT ITEMS:** Since a termination change order is deleting work from the contract, uncompleted and unused contract items, if they are to remain uncompleted, must be deleted from the contract by the change order. "Zeroing out" these items assists in releasing funding from the project. When terminating a contract that contains work that is condition of award (COA), be sure to delete that work from the COA requirements by completing the condition of award portion of the change order in CCIS. Due to limited character space in CCIS, it may be necessary to create more than one change order to complete the termination change order. Be sure these multiple change orders are concurrent.

[5] **PHYSICAL COMPLETION:** If the Contractor is not required to complete any contract Work after execution of the change order, the execution date of the change order should be established by the Project Engineer, and entered into CCIS, as the Physical Completion date for the contract. If the Contractor must complete some items of the Work, Physical Completion will be granted by the Project Engineer upon satisfactory completion of the Work (*Standard Specification* Division 1-03). This date assists the CAPS unit of AFS to know if insurance must be maintained on the project.

[6] **TIME:** The change order should contain a time statement, just like any other change order.

[7] **WAIVER:** The change order should contain waiver language similar to that found in Chapter 1-3.3A(2) of the Construction Manual.

1-2.4C(2) *Equitable Adjustment*

(I) **PRICING**

Section 1-04.4 of the *Standard Specifications* specifies that an equitable adjustment (EA) in accordance with Section 1-09.4 will be made when changes cause an increase or decrease in the cost of performing work on the contract. The basic theory of an EA is to leave the parties to the contract in the same position cost wise and profit wise as they would have been without the change, preserving to each as nearly as possible the advantages and disadvantages of their agreement. Although the contractor is entitled to profit on the changed work, the profit (or loss) on the unchanged work should remain unaffected by the equitable adjustment.

- This is an important point, *for unchanged work*, the contractor is entitled to the profit bid or a windfall, if the work turns out to be easier than expected.
- On the other hand, *for unchanged work*, the contracting agency is not obligated to make the contractor well for an under bid item.

Consequential damages are never allowed as part of a negotiated equitable adjustment. Consequential damages may include such things as: loss of credit, loss of bonding capacity, loss of other jobs, loss of business reputation, loss of job opportunities, impacts to another project, etc.

[1] **UNIT PRICES** An appropriate price may be established using average unit bid prices, citing similar unit bid prices, a determination of market value, by estimating the cost to perform the work, or a combination of these methods. Unit bid price is one indication of an equitable price, however the contracting agency should be prepared to support the price by other means.

[2] **FORCE ACCOUNT** When added work is paid by force account, a change order shall be prepared detailing the added work to be performed and the estimated cost. Standard Item Number 7715 is to be used for all force account items that do not have an assigned standard item number. Force account should be a last resort used only if the work can't be clearly defined.

[3] **OVERHEAD** There are two basic types of overhead as follows:

- **DISTRIBUTED FIXED COSTS:** Offsite "home office overhead" is the cost of running a company. These costs are assumed to be distributed among all the projects performed by the company. Onsite overhead is incurred as a function of time needed to accomplish the project. Onsite costs are assumed to be evenly distributed among contract items. This category of overhead is eligible under an equitable adjustment if working days are added to the contract as part of the adjustment.

- **VARIABLE FIXED COSTS:** these costs are directly associated with performing an item of work on the project and therefore vary with the quantity, the contractor is entitled to recover these costs as a part of an equitable adjustment.

(II) **FORWARD PRICING AND RISK**

The first and best option for an equitable adjustment is agreement in advance between the contractor and WSDOT on the increased or decreased cost and time for performance of the changed work. The Project Engineer should expend every effort possible to obtain a satisfactory negotiated equitable adjustment prior to submitting the change order to the contractor for endorsement. The Project Engineer must remember that the contractor is a full participant in the contract and retains all the rights and privileges during a negotiation. When bidding a job, the contractor must be optimistic and take appropriate risks. When negotiating, it is understandable and acceptable for the contractor to be pessimistic and avoid risk, unless compensated. Some key points to remember are:

| CHANGE ORDER — CHECKLIST | | | |
|---|---|--------------------------|---|
| Cont. #: _____ | | Cont. Title: _____ | |
| Change Order #: _____ | | C.O. Title: _____ | |
| | | | If Yes, State Construction Office Approval Required |
| I. Executed by the State Construction Office | | | |
| 1. | A cost or credit equal to or exceeding \$500,000.*1 | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. | A change in the contract documents beyond the scope, intent, or termini of the original contract.*2 | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. | Any proposed revision or deletion of work that affects the condition of award requirements. | <input type="checkbox"/> | <input type="checkbox"/> |
| II. Executed by the Region | | | |
| 4. | A cost or credit greater than \$100,000 but less than \$500,000. *1 | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. | A change in contract time greater than 10 and less than or equal to 30 working days must be related to changes implemented by change order. | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. | A change in contract time greater than 30 working days or a change in contract time unrelated to any change order. | <input type="checkbox"/> | <input type="checkbox"/> |
| III. Executed by the PE | | | |
| 7. | A determination of impacts and/or overhead. | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. | Specification change, involving Headquarters generated specifications. (Includes Region Generated specification requiring State Construction Office Approval) | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. | Specification change, involving Region generated specifications. | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. | Material or product substitution. | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. | A structural design change in the roadway section. (Requires State Materials Lab approval) | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. | A determination of changed condition. (Section 1-04.7 of the <i>Standard Specifications</i>) | <input type="checkbox"/> | <input type="checkbox"/> |
| 13. | Settlement of a claim submitted(Section 1-09.11(2) of the <i>Standard Specifications</i>) | <input type="checkbox"/> | <input type="checkbox"/> |
| 14. | Repair of damage regarding "acts of God" or "acts of the public enemy or of government authorities". (Section 1-07.13 of the <i>Standard Specifications</i>) | <input type="checkbox"/> | <input type="checkbox"/> |
| 15. | A structural change for structures (see BTA authority as shown in the Construction Manual). | <input type="checkbox"/> | <input type="checkbox"/> |

Approvals Obtained:

Project Engineer (Required): _____ Date: _____

Region (Required if yes marked): _____ Date: _____

State Construction Office: _____ Date: _____

State Materials Lab: _____ Date: _____

Other (Local Agency, FHWA, Surety, etc.): _____ Date: _____

To be completed by Project Engineer:

CO Reason (s) (see CCIS "Browse Reasons" or HQ Const. SharePoint): _____

Change order prepared by: _____ Date: _____

Has change been entered in lessons learned? Yes ___ No ___ Has design documentation been updated: Yes ___ No ___

Is this project under full FHWA stewardship oversight? *1 Yes ___ No ___

To be completed by Region:

Is the change eligible for Federal participation where applicable? Yes ___ No ___

Change order reviewed by: _____ Date: _____

*1 Change (Cost or Credit) greater than \$200,000 or greater than 30 days on Full Federal Stewardship Oversight requires FHWA approval (see Ch. 1-2.4C(3), Ch. 1-3.4 and <http://www.wsdot.wa.gov/biz/construction/Stewardship/Stewardship.xls>).

*2 Per RCW 47.28.050, any change beyond \$7,500 that is beyond the original scope shall go through the competitive bidding process.

This form represents the minimum information required by State Construction. If you wish to supplement this information, you may do so on a separate sheet of paper.

Figure 1-5

- A negotiated price will likely be higher than a competitive bid price.
- A proposal which assigns extensive risk to the contractor will likely be more costly yet.
- The contractor may be willing to take on this risk if the price is a bit higher
- The significant advantage of reaching a price agreement before the work is started (forward pricing) is that the contractor assumes the risk of the accuracy of the pricing assumptions and predicted duration for performing the work.
- (when forward pricing) the Project Engineer may utilize the high end of the estimating range in justification.
- (when forward pricing) an audited overhead rate may be substituted for the markups described in Section 1-09.6. Contractors can usually provide an estimated home office overhead rate which may be checked by an annual audit, if warranted.

(III) PRICING AFTER FACT

When establishing prices after the work has been performed, actual costs should be used to the extent they are available. The following are key points to keep in mind:

- Costs for equipment cannot exceed the rates established by the AGC/WSDOT *Equipment Rental Agreement* for an equitable adjustment.
- When pricing after the fact, the markups described in Section 1-09.6 are appropriate for measuring time and materials because there is no risk involved in after the fact pricing.

(IV) UNILATERAL PRICING

In the interest of being timely, the change order should be a tool to document agreement and not a negotiation tool back and forth. Ideally we will have agreement with the contractor when pricing the work. On occasion, however, due to time constraints and difference of opinion, we can't always come to agreement. The difference of opinion may be for only a small portion of the work. *Standard Specification* 1-09.4 (2) provides, "If the parties can not agree, the price will be determined by the Engineer using unit prices, or other means to establish costs". This is not to say that the contractor is obligated to honor unit bid prices for work that qualifies for an equitable adjustment. This allows us to proceed with changed work prior to reaching an agreement on the price. In the interest of being timely, and provided the Project Engineer is comfortable that the included price can be supported, there's nothing wrong with issuing a change order to the contractor unilaterally. This orders the work to proceed, establishes the State's position on cost, and puts the decision to continue negotiations in the contractor's hands as detailed under 1-04.5. The contractor is obligated to endorse, write a separate acceptance, or protest as described in the specification and a timeline is provided for these actions.

(V) TIME

The completed equitable adjustment should include provisions for any increases or decreases in contract time based on impacts to overall contract duration. The decision on time should be supported by an analysis of the project schedule. Analyzing time in advance encourages communication between the parties allowing the contracting agency to make an informed decision on the true costs. It also enables the contracting agency to mitigate time impacts if that is in the agency's best interest.

1-2.4C(3) Approval of Changes/Checklist

In addition to noting who can execute a change order, the checklist (see Figure 1-5) further indicates who must approve the change prior to execution. The completed checklist shall accompany the change order when it is transmitted to Headquarters, and represents the minimum information required to process the change order. If the Region wishes to supplement the checklist, they may do so on a separate sheet. Written approval constitutes agreeing with the general nature of the change and can be granted by memorandum or e-mail. The checklist works as follows: for any item marked "yes", approval from the State Construction Office must be obtained if indicated by the column with the "Xs". The Project Engineer and the Region Construction Office have the authority to decide not to proceed with the change. This approval does not constitute authority to proceed with the work. That authority must come from the person who will execute the change order (see approval to proceed) in an emergency; the Region Construction Manager may authorize work to begin on any change order if the State Construction Office cannot be contacted for the required approvals within a reasonable amount of time.

(I) STATE CONSTRUCTION OFFICE

[1] FHWA APPROVAL - On a project with federal funding and for which the stewardship responsibility has not been delegated (full FHWA oversight), written FHWA approval, or other less formal prior approval if the public interest is served by the more timely action, is required prior to beginning work on change orders that will:

- involve new construction on the Interstate
- alter the termini, character, or scope of work
- increase or decrease the project cost by more than \$200,000 (except for changes prepared in accordance with *Standard Specification* Section 1-04.6)
- add more than 30 days to contract time

{a} *who does what?* The State Construction Office will formally submit this type of change order to FHWA for approval.

Projects with full FHWA oversight are listed on the State Construction Office web site at:

www.wsdot.wa.gov/biz/construction/Reports.cfm#stewardship.

[2] CONSTRUCTION ENGINEER, ADMINISTRATION

{a} areas of responsibility Contract Payments and Withholding of Payments; Contractor Assignment of Payments; Contractor Default; Time Extensions; Assessment of Liquidated Damages; Contract D/M/ WBE, EEO, and Training Programs (i.e., Division 1 of the *Standard Specifications*).

[3] CONSTRUCTION ENGINEER, BRIDGE

{a} areas of responsibility: Division 6 of the *Standard Specifications* (See Chapter 1-1.3A(3))

[4] CONSTRUCTION ENGINEER, ROADWAY

{a} areas of responsibility: Divisions 2, 3, 4, 5, 7, and 8 of the *Standard Specifications* (See Chapter 1-1.3A(2)).

[5] STATE MATERIALS LAB

{a} areas of responsibility: Division 9 of the *Standard Specifications* (See Chapter 1-1.4) The State Materials Laboratory also advises the State Construction Office and Regions regarding an alternate material's capability to perform the same function as a required material. However, the State Construction Office makes the final approval based on application of the material, maintenance concerns, etc., as to whether an alternate material is capable of performing. As you will notice from the checklist, the State Materials Laboratory plays a major role- in:

CHECKLIST ITEM #11 the State Materials Lab is the design approval authority for a structural change with regard to roadway sections. Once design approval is obtained, the Region may approve the change order.

[6] BRIDGE TECHNICAL ADVISOR (BTA)

{a} areas of responsibility: the BTA is on call to the Project Engineer during active contract work. BTA's are responsible for questions relating to structures design, plan inconsistencies, and "minor" structural changes to support construction contracts.

{b} assignment of BTA: after the contract has been awarded, the Project Engineer may send a written request to the Bridge Construction Engineer in the State Construction Office for the assignment of a BTA. The State Construction Office will evaluate the request with the Region to determine if BTA assignment is appropriate or necessary for the specific contract under discussion..

{c} delegation of executing authority if BTA is assigned: when a BTA has been assigned to the project, the Region may execute minor structural change orders provided: 1) there is written structural concurrence and a recommendation from the BTA; and 2) the magnitude of the change is within the Region's authority to execute. A copy of all correspondence between the BTA and the Region shall be concurrently sent to the State Construction Office. All other requirements of the change order checklist apply with the exception that

when structural changes, under item #15, are deemed to be "minor" the BTA's written structural concurrence and recommendation may substitute for the State Construction Office approval.

{d} minor structural changes: a "minor" structural change is not easy to identify, therefore, when in doubt, contact the State Construction Office for advice. Changes involving specifications, materials, work method changes, repairs, major design changes, and CRIPs should be referred to the State Construction Office. The BTA would never become involved in contract administration issues such as payment, determining the existence of a change to the contract, or directing the contractor. These would be construction issues. Structural questions which require support analysis exceeding field capabilities or questions regarding geotechnical or hydraulics issues should be referred to the State Construction Office. Any redesign of significance will be managed through the State Construction Office.

{e} BTA guidelines:

- Develop the most economical solutions with consideration to the Contractor's means and methods.
- Structural concurrence and recommendations for "minor" structural changes should be made in writing to the Project Engineer and the State Construction Office and should include:
 - A cost estimate of the change work and written documentation to support the recommendation for changes.
- Keep a project diary of all activities and recommendations.
- Refer contract administration issues to the Project Engineer and the State Construction Office.
- Conform to the field safety requirements of the Region and the Contractor.
- Give the project priority but be prudent in the use of time and expense charges.

The above guidelines are generally representative of the scope of services to be provided by the BTA. The BTA's immediate administrative support on-site will be provided by the Project Engineer. The BTA's technical responsibility will be to the BTA's supervisor in the Bridge and Structures Office. Overall determination and monitoring of the assignments will be made by the State Bridge and Structures Engineer.

{f} BTA summary: Bridge Technical Advisors advise the Project Engineer in their area of expertise, which is structural design. The Project Engineer has the responsibility and authority to administer all aspects of the contract. Therefore, when it comes to contract issues of payment, work methods, material substitution, etc., it will be the Project Engineer's responsibility to get the proper approval of those aspects of structural changes

1-2.4C(4) Delegation of Execution Authority**(I) HIGHWAY CONSTRUCTION**

The Change Order Checklist (Figure 1-5), in addition to describing the approval requirements previously described, also outlines who has authority to execute a change order.

The State Construction Engineer (or designee) executes the change order:

- if any one of 1, 2, or 3 is true (checklist item # 1, 2, or 3 is yes)

The Region (Regional Administrator or designee) may execute a change order provided:

- 1, 2 and 3 are not true of the change (checklist item # 1, 2, and 3 are no)

The Regional Administrator's authority to execute change orders may be:

- delegated to the Regional Construction Manager
- further delegated to the assistant to the Regional Construction Manager

The Region's (Regional Administrator or designee) authority to execute a change order may be delegated to the Project Engineer provided:

- items 1 through 6 are not true of the change (boxes 1 through 6 are marked no)

In the absence of the Project Engineer, the Project Engineer execution authority may be further subdelegated to the Assistant Project Engineer.

(A) LIMITS OF EXECUTION AUTHORITY

| Executing Authority | Dollar Limit | Time Limit |
|--|---------------------------|-----------------------|
| State Construction Engineer | Greater than \$1,000,000 | Greater than 60 days |
| <u>State Construction Engineers for: Administration, Bridge, and Roadway</u> | not to exceed \$1,000,000 | not to exceed 60 days |
| <u>Assistant State Construction Engineers for: Administration, Bridge, and Roadway</u> | not to exceed \$750,000 | not to exceed 45 days |
| Region Administrator or Designee | not to exceed \$500,000 | not to exceed 30 days |

(II) WASHINGTON STATE FERRIES

The Director and CEO of WSDOT Division of Washington State Ferries is authorized to approve all changes for terminal construction projects and may consult the State Construction Office for advice. This authority to execute change orders may be:

- Delegated to the Director of Terminal Engineering provided the change does not include a cost or credit exceeding \$500,000 nor does it change the condition of award requirements.
- Authority may be further delegated to the Manager of Terminal Maintenance and Construction provided the change does not exceed \$100,000 and does not include a time extension exceeding 10 days.

- In the absence of the Manager of Terminal Maintenance and Construction, that Manager's execution authority may be further subdelegated to the Assistant.

(III) LOCAL AGENCY PROJECTS

When the project being administered includes local agency participation, the project engineer should coordinate with the Regional Local Programs Engineer and the local agency to establish an approval process acceptable to all the parties. Any funding constraints and timelines for reviews and approvals should be established and specified in the contract, if appropriate.

1-2.4C(5) Approval to Proceed

All change orders require an approval to proceed with the change work prior to the change work being performed. The best business practice is to have a signed change order in place prior to proceeding with the work. Occasionally it may be necessary to proceed with the change work prior to the execution of the change order, but this should be the exception. Such an approval to proceed might be warranted if it will provide a cost/time benefit to WSDOT or minimize a cost/time disadvantage to the contractor. In the event that the Project Engineer determines that it is in the State's best interest to proceed with the work prior to having a signed change order, the permission of the executing authority to proceed with the change under these circumstances must be documented in the file. The executing authority is the person who will ultimately execute the change order. The project engineer must have either an executed change order or documented approval to proceed in place prior to proceeding with the work

1-2.4C(6) Documentation**(I) STATE CONSTRUCTION OFFICE ROLE**

The State Construction Office will review Region executed change orders and provide appropriate feedback. Four main areas the Construction Office will review are:

- whether the change is appropriate and there is entitlement
- determine compliance with the change order checklist
- check for existence of supporting documentation
- determine if eligibility for federal-aid participation has been addressed

(II) PROJECT FILES

[1] CCIS INPUT The Project Engineer shall ensure that the following information is input into CCIS accurately and in a timely manner:

- Page 1
 - Contract No.: (in 6-digit format)
 - Proposed By: C(Contractor), E(Engineer), or B(Both)
 - Order Date: Date change order entered into CCIS
 - Unilateral Change: Y/N
 - PE Stamp required: Y/N
 - Short Description: Descriptive title for change order
 - Is this a MINOR CHANGE? :Y/N

- Page 2 – (Use only if approval to proceed is requested)
 - Approval Date: The date approval given
 - Estimated Amount:
 - Requested By: Who requested approval
 - Approved By: Who gave approval
 - Estimated Amount: The estimated dollar amount of the change order
 - Narrative: Description of why approval is needed
- Page 3 – (Use only if this change order is a CRIP)
 - CRIP Amount
 - Commentary on CRIP
- Page 4
 - Sent To Contr: The date the change order was sent to the contractor for signature/concurrence
 - Rec'd From Contr: The date the change order was returned from the contractor
 - Surety Consent: Was surety consent obtained
 - Surety Date: Date Surety consent obtained
 - PE Recom: Is PE recommending approval by Region or HQ
 - Exec: Initials of PE if executing change order
 - Date: Date that PE executed or recommended execution (Note: the date field on line 4 is for Region or HQ use only)
 - By Whom: Who voided change order (if applicable)
 - Date: Date change order was voided (if applicable)
- Page 5
 - Phase: Contract phase affected by change order (if days added/deleted)
 - Description: Phase description (if days added/deleted)
 - Net Change: Number of days added/deleted by change order
- Page 6
 - What Section of contract changed?
 - Describe the Detail Change:
 - What created the need or caused the change?
 - What is the purpose of this change order?
- Page 7
 - Description: Change order text (uploaded from MS Word)

If new items are created, contract items modified, or Condition of Award is modified by the change order, this information must be input into CCIS as well.

It is important that CCIS input be accurate and timely. CCIS is used by internal and external customers to monitor project changes and costs. Information on change orders (*including minor changes*) is readily accessible through a numbering process and must be adequate so that everyone involved will understand the need for the change. Some key items to remember are as follows:

- Is there a clear description of the work?

- Is the origin and purpose of the change being entered using at least two of the reasons listed in the system?
- Was there an order, other than a signed change order, by the engineer for the contractor to proceed?
- Is there a reference to any key documents in the change order file?
- Are any increases or decreases in contract time associated with the change order entered in the appropriate field enabling the *Weekly Statement of Working Days* to be automatically updated?
- For condition of award change orders, are the appropriate fields filled in to generate the change order and automatically update the condition of award items?
- Are any disclaimers included in the change order and are any agreed upon disclaimers included in the text?
- Are all the appropriate dates entered?

[2] Memorandum: The memorandum transmitting the change order and attachments should include an explanation in sufficient detail so that everyone involved will understand the need for the change, will see that the price is appropriate and that appropriate checks and consultations have been made. The following is a list of items to consider for inclusion in the transmittal when putting together a change order:

{a} describe the change

- what is required by contract?
- what is the change?
- how does it solve the problem?
- reason for entitlement/why is this not paid under the contract?
- is there time associated with the change?
- did the contractor concur/if not why?
- is FHWA participation appropriate?
- does the change affect COA?

{b} evolution of the change

- how did the change evolve?
- discussions with associated offices (maintenance, utilities, environmental, budget, design, etc.)
- alternatives considered
- BTA involvement
- design approval necessary
- COA substitutions authorized by State Construction Office
- approvals in accordance with the checklist/date

{c} payment

- any increase or decrease in cost
- how it was established (see equitable adjustment)
- force account must include estimate

{d} time

- does the change impact the critical path?
- how was any change in working days established?
- note if a change in contract time affects the amount of liquidated damages

{e} prior approval

- was the change order executed by the appropriate WSDOT authority prior to proceeding with the work?
- if not, prior approval by whom and when

{f} attachments

- checklist
- documentation of approval to proceed
- any supporting documentation needed for understanding

[3] DISTRIBUTION

{a} Region-executed When the Region (PE or Region Construction Office) has executed a change, then copies should be sent to the Contractor and the CAPS Unit of Accountability & Financial Services, (if necessary, the CAPS Unit of Accountability & Financial Services creates and coordinates new groups in “CAPS” and “TRAINS”). The original signed change order, the original memorandum and any other pertinent documentation, along with one copy of the change order and one copy of the memorandum should be sent to the State Construction Office. If the change order requires FHWA approval per Chapter 1-2.4C(3), the Assistant Construction Engineer will route a copy of the change order package to the responsible FHWA representative upon receipt. If the change order utilizes the “Minor Change” process, then the two page document substitute for the transmittal and CCIS change order print out. The original two page “Minor Change” document should be sent to the State Construction Office,

{b} Headquarters-executed If the change is executed at the State Construction Office, the original signed change order, the original memorandum and any other pertinent documentation, along with three copies of the change order should be sent to the State Construction Office. Copies will be sent by the State Construction Office to the contractor, the Region, the CAPS Unit of Accountability & Financial Services, (if necessary, the CAPS Unit of Accountability & Financial Services creates new groups and/or items) and, if appropriate, to the State Bridge Office, Design and the Materials Lab. If the change order requires FHWA approval per Chapter 1-2.4C(3), the Assistant Construction Engineer will route a copy of the change order package to the responsible FHWA representative upon execution.

{c} protecting the interest of the surety One area for the Project Engineer to watch is the interests of the bonding company. Consent of Surety should be required on any change order that expands the scope of the contract. It is also appropriate on any change of large value or risk. Failure to obtain consent of surety could weaken the State’s protection under the bond.

{d} Requiring FHWA approval Upon receipt of the signature page signed by the FHWA representative, the State Documentation Engineer will route a copy to the Headquarters files and the change order final records file.

1-2.4C(7) Minor Changes**(I) OVERVIEW**

All contracts will have a standard item for “Minor Changes”. This item will be established in every group as a calculated lump sum. Credits, debits, changes in working days and no cost changes may all be processed under the minor change method subject to the listed criteria.

(II) CRITERIA FOR USE

Keep in mind that although the change meets the criteria for using the minor change process, the Project Engineer may decide that this process is not appropriate. The use of this item is at the Region’s and the Project Engineer’s discretion. Also keep in mind that the limitations and approvals required by the change order checklist still apply as well as all other change order criteria not modified by this *Minor Changes* section. Use of the minor change process is limited to changes that satisfy all of the following criteria:

- the value of the change (credit or debit) is estimated at \$15,000 or less and,
- any change in working days not greater than ten days.
- The proposed change can be fully described and explained on page 1 (change order page) of the form without additional sheets (i.e. Revised plan sheets)

(III) ENDORSEMENT

In the interest of being timely, the change order should be a tool to document agreement and not a negotiation tool back and forth. The Contractor’s authorized signature on the change order is desirable but not mandatory. A phone call or a verbal agreement with the project superintendent may be appropriate when payment is to be made under the item “Minor Changes”. This may be a good discussion item at preconstruction meetings. The Project Engineer should determine when the Contractor’s signature is required based on when it is in the State’s best interest to document agreement prior to proceeding with a change order. Some situations that may warrant the Contractor’s signature are as follows:

- The contract includes substantial incentives.
- There are mutual benefits associated with the change.
- The change might include impacts to time or other work.
- The change is proposed by the Contractor.
- The change is a claim settlement.

In any case, a copy of page 1 (Change Order Page) of the Minor Change form must be sent to the Contractor. If the Contractor does not agree with the terms or conditions of any change order and has not endorsed the change, then the Contractor is required to follow the procedure outlined in Section 1-04.5 of the *Standard Specifications*. This orders the work to proceed and puts the decision to continue negotiations in the Contractor’s hands as detailed in that section. The Contractor is obligated to endorse, write a separate acceptance or protest as described in the specification, and a timeline is provided for these actions.

(IV) EXECUTION

Due to the criteria for the application of minor changes, the Project Engineer has the authority to execute these change orders, after obtaining all approvals required by the change order checklist.

(V) PAYMENT BY LUMP SUM

The negotiation of prices for payment under the item “Minor Changes” is intended to be the same as any other change order. The focus, as always, should be forward pricing such that the Contractor controls the work and assumes the risk. However, situations occur where it makes sense to measure portions of the work in a variety of ways such as units, force account and/or lump sum. The method for establishing, measuring and monitoring the total may be by any combination of methods however, the payment will only be by a lump sum under the item “Minor Changes”.

(VI) PROJECT FILES

[1] CCIS INPUT: Minor Change change orders must be entered into CCIS, however the required input is slightly abbreviated. Since a formal change order document as described in Chapter 1-2.4C(6) is not processed, the *Work Description* section in CCIS requiring a detailed upload of text is not required. However, the *Short Description* is required and should provide enough detail to identify the content of the Minor Change change order. All other information requested by CCIS, including changes to working days, is required.

[2] TRANSMITTAL: under the minor change process, DOT Form 421-005A EF “*Change Order - Minor Changes*” substitutes for the transmittal included in the more formal process described above. The information on the Minor Changes form should at a minimum briefly document three key items:

- A description of the change
- Reason for entitlement/why is this not paid by bid items.
- Any increase or decrease in cost and time and briefly how it was established.

[3] DISTRIBUTION: when utilizing the Minor Change process, the minor change form is substituted for the change order document and the transmittal. Backup documentation shall be kept in the project file at the Project Office, with a copy of the completed Minor Change form. The original, signed Minor Change form, one copy of the form, change approval documentation, and the original, completed change order checklist shall be submitted to the State Construction Office. The Minor Change shall be fully documented on DOT Form 421-005A EF, which is limited to pages 1 (Change Order Page) and 2 (Memorandum Page). A copy of the form may be used to document the payment.

1-2.4D Force Account

1-2.4D(1) General

When it is difficult to provide adequate measurement or to estimate the cost for certain items of work, force account may be used in order to pay the Contractor for performing the work. Some contract items may be set up to be paid by force account. Some change orders may require payment by

force account. Section 1-09.6 of the *Standard Specifications* describes the boundaries for payment of work performed by the force account method. In any case, the purpose of force account is to fully reimburse the Contractor for costs incurred on the work. These costs may also include indirect segments, such as travel, per diem, safety training, industrial safety measures, overhead, profit and other hidden costs. The objective is to minimize the inclusion of any “contingencies” included in the contract bid in anticipation of costs that may be incurred during force account work and not reimbursed.

When work is added to the contract and is to be paid by force account, a change order will have been prepared describing the added work to be performed. The change order package will also contain an independent estimate of the cost to perform the added work. All non-standard force account items are assigned the Standard Item Number 7715.

Force account payments are typically not authorized for employees engaged in management or general supervisory work. The cost for this type of activity is presumed to be included in the Contractor’s markups for overhead and profit. However a foreman or, in some cases, a dedicated superintendent devoting full time to the force account work is eligible for payment on the force account.

On projects that require the Contractor to employ trainees, these employees may be utilized in force account work.

In the case of some Emergency Contracts (see *Emergency Relief Procedures Manual* M3014.01) which will be measured and paid by Force Account, it is appropriate for the Engineer to consider payment for mobilization of equipment to the site of the emergency, including all staff time employed to procure and coordinate the mobilization. It may also be appropriate to include the labor payment for a dedicated superintendent and foremen employed solely to oversee the emergency work. On emergency contracts the mark ups may not be enough to cover the cost of performance bonds; the Project Engineer may consider payment for performance bond costs when making payment under emergency force account contracts.

The Project Engineer should consider a decision to direct force account work with the same degree of caution that would be applied to directing any other work on the contract. The Contractor should have the expertise to schedule the work and determine what equipment is required. In most cases, it is best that we allow the Contractor to propose the method and approach to the work. Our most effective role would be to concur or approve of the Contractor’s proposal or suggest modifications to it. Before any work is performed by the Contractor on a force account basis, the inspectors should review and agree with the Contractor upon:

1. **Labor.** The classification and approximate number of workers to be used, the wage rate to be paid those workers, whether or not travel allowance and subsistence is applicable to those workers, and what foreman, if any, will be paid for by force account. This agreement will be closely tied to the development of the Labor List.
2. **Materials.** The material to be used, including the cost and any freight charges whether the material is purchased specifically for the project or comes from the Contractor’s own supply. For materials representing a significant cost,

or where the industry experiences fluctuations in price, the contract allows for shopping and the Contractor may be directed to obtain quotations. If time permits and the situation seems appropriate, the Project Engineer may want to do this.

3. **Equipment.** The equipment to be used including the size, rating, capacity, or any other information to indicate the equipment is proper for the work to be performed whether the equipment to be used is owned by the Contractor or is to be rented. The cost per hour for the equipment to be used. In the case of rented equipment, the Engineer may ask for competitive quotations, provided the request is made in advance and there is time to obtain them.

Payment for force account work should be made on the same timely basis as any other item of work. When money is being withheld from a progress estimate, the criteria for withholding should apply equally to all items of work, not just to force account work, because of its method of payment.

The procedure for record keeping and payment of force account work on change orders shall be the same as for contract items to be paid by force account. Separate records are to be kept for each force account whether it is an item in the original contract or established as a result of a change order.

1-2.4D(2) Payment Procedures for Force Account Work

1. **Labor.** The specifications require the Contractor to prepare and submit a "Labor List" in advance of force account work. Once approved by the Project Engineer, this list provides the hourly rate for force account calculations until a new list is approved. New lists will not be approved retroactively and calculations previously made from an approved list will not be changed when a new list is approved. If the Contractor fails to submit a list before the first force account calculations are made, then the Project Engineer will determine the rates from the best data available (payrolls on this job, payrolls on other jobs, prevailing wage requirements, union information, etc). Labor list rates will include all the pieces of wage expense — base rates, benefits, assessments, travel, with allocations shown where necessary. Examples of Labor List entries might be:

| Generic Laborer (Straight Time) | | John Doe, Teamster (Overtime) | |
|------------------------------------|------------|----------------------------------|------------|
| Basic Wage/hr | \$21.36 | Basic OT Wage/hr | \$32.81 |
| FICA (7.65%) | | FICA (7.65%) | |
| FUTA (0.80%) | | FUTA (0.80%) | |
| SUTA (5.42%) Total = | 2.96 | SUTA (5.42%) Total = | 4.55 |
| Indust Ins \$1.01/hr | 1.01 | Indust Ins \$1.01/hr | 1.01 |
| Benefits/Hr \$30.78/hr | 5.45 | Benefits/Hr \$46.37/hr | 8.00 |
| Travel Expense | | Travel Expense | |
| \$250/40 hrs | 6.25/hr | \$250/40 hrs | \$52.62/hr |
| Total | \$37.03/hr | Total | \$52.62/hr |
| Use | \$37per hr | Use | \$53per hr |

These examples show the rate rounded to the nearest dollar, which is permissible. If either party would prefer to use the unrounded amount, that is also acceptable. When deciding

how many hours require compensation, the specification allows all hours that are a contractual obligation or are customary payments made to all employees. This means that, if a labor contract calls for 4 hours of pay for any call out, then that is a contractual obligation and the 4 hours would be eligible for reimbursement. (As always, the Contractor is expected to reassign the employees, if possible, to avoid the penalty.). In the same vein, a non-Union contractor, who has made call out payments to all employees for years, would be eligible for reimbursement for similar payments in a force account.

2. **Materials.** Materials also work from a list, but the list is generated in a different fashion. The Project Engineer provides the basic list of materials observed by the inspector. This is done in a timely manner (daily, unless the Contractor agrees otherwise). The Contractor adds prices to the list and attaches invoices or affidavits to support the prices. Once the list is returned and checked, payment can be made.

If a shipment of material is only partially consumed during the force account reporting period, the inspector may choose to include the entire amount in the first report or to estimate the amount consumed during each reporting period. The decision should be based upon the amount of the shipment, the nature and cost of the shipment and the security of the stockpile. A case of empty sandbags to be utilized throughout the winter for pollution control would adapt well to a single report, while a stockpile of galvanized conduit should probably be reported piecemeal as it is used in the work. The Contractor may use copies of the original invoice when the material is reported incrementally. If the Contractor has to restock unused material, restock charges can be reimbursed if the original order was reasonable for the work planned.

Along with supplying prices and invoices, the Contractor may suggest additions or corrections to the Materials List. These suggestions will be reviewed by the Project Engineer and, if appropriate, added before payment is made.

If the Contractor does not have an invoice, as in the case of stockpiles or some warehouse stock, then an affidavit will suffice. The Engineer may review the affidavit and, if it is an unreasonable price that cannot be supported, the Engineer may substitute another price, utilizing the best data available. The reasonableness of the price must consider the circumstances of the purchase and all costs associated with obtaining material from another source.

The specifications allow the Engineer to require competitive quotations, if this is done before the work is started and sufficient time is available. If the Contractor has to divert an employee to obtain the quotations, then that employee may be included in the labor reimbursement for the force account.

3. **Equipment.** The Project Engineer should review and comply with the rules governing payment for equipment as outlined in the most current AGC/WSDOT Equipment Rental Agreement. This agreement was developed as a supplement of the specifications and is relatively self explanatory.

There are three methods of acquiring equipment for use on a force account. "Owned" means that the Contractor controls and operates the equipment. A long term lease arrangement would be the same as ownership. Owned equipment is priced according to the Blue Book. "Rented to Operate" means that

the Contractor has obtained a piece of equipment through a short term rental and will operate that equipment with its own employees. Rented to Operate equipment is priced according to the invoice from the rental agency. "Rented Operated" means that the Contractor has obtained a service from an individual or a company to provide a piece of equipment with an operator. An operated rental is not paid as equipment, but rather as a Service. In some cases, the Service will be reclassified as an entity performing in the manner of a subcontractor (see below).

Damage waivers are compensable. The Engineer has the discretion to reimburse for a damage waiver when it makes good business sense. Upon request, the Contractor should be able to demonstrate that the purchase of the damage waiver is consistent with their standard business practice. Consideration should be given to the potential risk of damage to the equipment versus the cost of paying for the damage waiver. In most cases, the cost of the waiver is minimal. The damage waiver does not cover damage caused by operator negligence, nor should the Department reimburse the Contractor for repair of any damage caused by operator negligence.

Normal wear and tear on equipment is included in the Blue Book rental rates. The ownership rates include major overhaul of the equipment. The Blue Book defines major overhaul as the periodic rebuilding of the engine, transmission, undercarriage, and other major equipment components. The operating rates include the cost of daily servicing of the equipment, including the replacement of small components such as pumps, carburetors, injectors, filters, belts, gaskets and worn lines. The operating rates also include the cost of expendables such as fuel, lubricants, filters, tires, and ground engaging components, such as pads, blades bucket teeth, etc.

The costs of extraordinary operating expendables are not covered in the operating rates due to their highly variable wear patterns. These extraordinary operating expendables may include certain ground engaging components, such as hammer and drill bits, drill steel, augers, saw blades, and tooth-bits. The cost for these items will normally be recovered separately, based upon invoices for their cost.

Repair of damage is considered a risk of providing equipment. The cost of this risk is assumed to be in the markup for overhead and profit. Costs for repair of damage should not be included in the force account direct charges. A common event is the offer of a Damage Claim Waiver by a renting agency. If such a charge appears on an invoice, it may be considered for inclusion when payment is calculated.

As with Materials, the Engineer may require competitive bids for equipment rentals. Normally, this requirement must be made in advance, before the work is started. However, if the rental is not made in an "arm's length" transaction, for example when the contractor rents the equipment to himself through some sort of business structure, then after the fact quotations may be obtained from independent rental agencies and the lowest such quotation may be used in place of the rental invoice.

Finally, as a special insertion into this Manual, there is a separate method of paying for Pavement Routers for Crack Sealing. WSDOT has agreed to set aside the Blue Book rate for this equipment and to pay \$20 per hour for the operated router.

4. **Services.** Services billed by invoice will be compensated according to the invoice if that is the typical method in standard industry practice. Typical industry practice might include specialized technical services, such as Testing Labs and Environmental Cleanup firms. Also included might be unit price invoices, such as Sweeping per mile or Concrete Pumping per cubic yard, or lump sum quotation invoices, such as Remove Danger Tree or Pump Septic Tanks.

The markup for services depends on the nature of the firm's activities on the project. If the firm is clearly an uninvolved supplier, then the Service markup will apply. If the firm is acting as a subcontractor, then the markup will be made under the subcontractor provisions described below, with the underlying (subcontractor's) overhead and profit assumed to be embedded in the invoice.

It should be noted that payment of force account work through an invoice does not excuse the Contractor from other requirements of the contract. Wage rate rules, subcontractor approvals and other provisions are still contract requirements and must be enforced. Such enforcement, however, is independent of the administration of force accounts and force account payment will not ordinarily be withheld to aid in the enforcement. Note that the statutes associated with some provision requirements do involve the withholding of payment for associated work.

As with materials and equipment rentals, the Engineer may require competitive bids for invoiced services. Normally, this requirement must be made in advance, before the work is started. However, if the service is not obtained in an "arm's length" transaction, for example when the invoice comes from a subcontractor without sufficient effort to find competitive prices, then after the fact quotations may be obtained from independent service providers and the lowest such quotation may be used in place of the service invoice.

5. **Mobilization.** Mobilization and demobilization are reimbursable expenses for assembling equipment, materials, supplies and tools for any force account item and then returning those items to the previous location when the work is finished. Demobilization can include restocking costs for materials not utilized. Force account mobilization applies to original bid item force accounts as well as force accounts added through change orders. The standard bid item "Mobilization" is assumed to not include mobilization activities for force account work.

Mobilization may occur within the project limits if special efforts are required to assemble needed items to the force account location. For example, if a lowboy is required to move a bulldozer from one end of a project to the other, then that mobilization effort would be reimbursed.

If off site preparation work is needed, the Contractor must notify the Engineer in a timely enough manner that the work can be observed, if that is desired. Without such notice, that preparation work will not be reimbursed.

The AGC Agreement allows for pro-rating mobilization costs for equipment that will be used in both force account and bid item work. This will be done by negotiation and agreement. For example, if the Project Engineer and Superintendent agree that a mobilized backhoe will be used three hours on regular work for each hour on force account, then 25 percent of the mobilization costs would be paid on the force account.

All mobilization activities can be categorized as Labor, Equipment, Materials, or Services and will be listed under those categories for payment.

6. Other Payments

Permits or Fees

When a force account requires the Contractor to pay for permits or fees (hazardous waste dumping, etc.) that would fall outside the scope of overhead, these costs are reimbursable and may be included in the “Services” section of the force account payment.

Sales Tax

How retail sales tax is handled on the overall project depends on the ownership of the property upon which it rests. Keep in mind that a project may span more than one type of ownership.

STATE AND PRIVATELY OWNED LANDS

Work performed on state or privately owned land falls under Section 1-07.2(2) of the *Standard Specifications* and Department of Revenue Rule 170. Retail sales tax **is required** on the total contract amount. The Contracting Agency provides this payment to the Contractor to be passed through to the Department of Revenue. This is the tax noted in the summation of contract payments.

The Department of Revenue considers materials incorporated into the final work (such as concrete, signs, aggregates) to be an integral part of the completed improvement. These materials are purchased for “resale”. **No tax is required** when purchasing these materials, therefore, no tax is paid as part of force account payments or as part of pricing change order work. The contractor purchases these materials as tax exempt and, in turn, sells them to the State as a part of the total project and the only tax collected is on the total contract as described previously.

There may be items that the contractor **is required** to pay sales tax on at the point of purchase. The Department of Revenue considers supplies consumed (such as concrete forms, fuel or tools, equipment purchased or rented) during the performance of the contract to be “consumables”, a part of the overall cost of doing business. The contractor is required to pay retail sales tax at the point of purchase/rental for these items. These costs are bid as a part of the associated bid items.

When calculating or estimating the cost of force account or change order work, sales tax should be included in the individual invoices for “consumable” items. It’s a fine line; for example, permanent striping is considered “resale” (tax exempt), temporary striping is a “consumable” (taxed). The fact that taxes are shown or not shown on invoices is not a reliable indication of what the contractor is obligated to pay. The contractor may receive reimbursement later

or be required to pay additional taxes when the contract is complete. The contractor’s books are audited by the Department of Revenue upon completion of each project to ensure compliance. The Project Engineer must apply these guidelines as closely as possible. Note that, in some cases, it is possible and necessary to pay a tax on a tax.

CITY, COUNTY, AND FEDERALLY OWNED LAND

Work performed on city, county or federally owned lands falls under Section 1-7.2(1) of the *Standard Specifications* and Department of Revenue rule 171. Retail sales tax **is not required** on the total contract amount.

The Contractor **is required** to pay retail sales tax on all purchases regardless of use (“consumable” or not). For contract work, this expense is incidental and therefore included in the individual contract items as a part of the bid amount.

When calculating or estimating the cost of force account or change order work, sales tax should be included on all invoices. As stated previously, the fact that taxes are shown or not shown on invoices is not a reliable indication of what the contractor is obligated to pay. The contractor may receive reimbursement later or be required to pay additional taxes when the contract is complete. The contractor’s books are audited by the Department of Revenue upon completion of each project to ensure compliance.

Exceptions

Construction of the following facilities has been specifically exempted from Department of Revenue rule 171. Work on these facilities falls under Department of Revenue rule 170 even if they are on non state owned land:

- Water mains
- Sanitary sewers, if they are not a part of the road drainage system
- Telephone and telegraph lines
- Electrical power, if such power does not become a part of a street or road lighting system
- Other conduits or lines

Conclusion

Most of the time, retail sales tax on invoices is required. In turn, we need to reimburse the contractor for the tax (paid or deferred) on force account invoices and include the costs when estimating the value of change order work.

The one exception is “resale” items if the contract falls under Department of Revenue rule 170. “Resale” items under this rule do not require that retail sales tax be paid at the point of purchase.

These rules should be adhered to regardless of whether retail sales tax is shown on the invoice.

Subcontractor Markup

If work is being performed by a subcontractor (or by a service supplier acting in the manner of a subcontractor), then a supplemental markup will be added. This supplement will be added one time for each payment, even if a lower-tier subcontractor is doing the work. The markup is a graduated step down rate, which gets smaller for each force account item as the amount of work increases.

The amounts on which the rate is determined will be tracked separately for each subcontractor on each force account item included in the original contract or added by change order. If two subcontractors work on the same force account, then the accumulated total will be tracked for each, and markup for work done by each will be according to the respective total. If a single subcontractor works on two force accounts, then there will be a running total of work done by that subcontractor on each account and the markup rate for the same sub on different force accounts could be different.

1-2.4D(3) Records and Source Documents

Accurate daily time records should always be kept when performing force account work. Form 422-008, "Daily Report of Force Account Worked", is provided for the Project Engineer's use to help facilitate timely, accurate, and complete records of the daily force account activities. Whatever method of record keeping is used, it is recommended that the document be signed by both the Inspector and a representative of the Contractor agreeing on the materials used and the hours noted for labor and equipment. A copy of the daily report must be provided to the Contractor. When the work is performed by a subcontractor, a copy should also be provided to the subcontractor.

The costs for force account work should be determined and entered into the CAPS system in as timely a manner as possible.

All calculations for determining force account costs should be checked, initialed, and dated. After the cost of the work has been computed in the office, a copy of calculations shall be furnished to the Contractor.

1-2.4D(4) Summary

To summarize, the purpose of force account is to fully reimburse the Contractor for costs incurred on the work. The objective of force account administration is to minimize the inclusion of any "contingencies" included in the contract bid in anticipation of costs that may be incurred during force account work and not reimbursed.

Items which are bid or negotiated with a unit price or a lump sum agreement will not be converted to force account unless a change (as defined in Section 1-04.4 of the *Standard Specifications*) has occurred. On the other hand, any work to be done or the remaining portion of work underway on a force account basis may be converted to unit prices or a lump sum at any time the parties can reach an agreement. Such a conversion is highly desirable and should always be a goal of the Project Engineer.

1-2.4E Differing Site Conditions (Changed Conditions)

There are two types of changed conditions. The first (Type I) is a hidden condition that is different from that indicated by the contract (the borings do not show this rock). The second (Type II) is a hidden condition that is not shown differently in the contract, but is unusual and different from what a reasonably prudent contractor would expect (I've never seen this before and nobody else has ever seen it, either). In either

case, to qualify for renegotiation, the condition must have a "material" affect on the cost of doing work. In other words, there must be a definable difference in the way the work will now be done and that difference must be significant.

The contractual rules included in Section 1-04.7 are related to fair notice and to giving the State an opportunity to examine the condition and, perhaps, order a different approach to the work. If the contractor takes away this opportunity, then there may be grounds for denying compensation for the different approach to the work. In some cases, the changed situation is not recognized until much or all of the work has been done. In that case, the determining factor for notice is the time when the Contractor knew or should have known of the condition. Whenever notice is served, it must be written.

In a perfect world, a changed condition will be recognized, notice will be given and work will be stopped until all the interested parties can reach agreement on how to proceed. In the real world, we are often faced with traffic closures and safety issues. Contractors work on tight schedules with one activity interdependent on others and it is not in the public interest to stop work while a changed condition discussion takes place. As soon as possible, to the extent possible, and in any manner which accomplishes the intent, the Project Engineer is expected to consult with the Region Construction Manager and the State Construction Office to obtain the approval before agreeing that a changed condition exists or before entering negotiations for price adjustments.

The Department response to a contractor's assertion of changed conditions, whether agreement or denial, must be written. The Project Engineer must keep accurate time and material records whether the response was negative or positive.

1-2.4F Termination of Contract

Contract termination is divided into two major categories, termination for default and termination for public convenience. Section 1-08.10(1) of the *Standard Specifications* defines the situations when a contract may be terminated for default (doesn't happen very often.) Section 1-08.10(2) of the *Standard Specifications* defines the situations when a contract may be terminated for public convenience.

Keep in mind that the conditions of the termination may be negotiated in the event that the termination is in the best interest of both parties. An example would be if a major change is beyond the abilities of the contractor. Negotiations with regard to conditions of the termination may include pricing partially completed items, mobilization payment, or the State taking possession of fabricated/purchased materials.

In both categories, if federal funds are involved, FHWA needs to be notified and informed of the situation early in the process. Specifically, Federal participation eligibility should be discussed prior to making a decision on termination. Formal notification and discussion should use normal channels through the Region to the State Construction Office. Authority to terminate a contract rests with the same position that had authority to execute the contract.

1-2.4G Subletting Portions of the Contract

Requests by the Contractor for subletting are submitted to the Project Engineer on Form 421-012 EF (Request to Sublet Work) and are to be approved by the Regional construction manager or designee. The request must be approved prior to the performance of any work on the project by either the subcontractor or a lower-tier sub. A copy of the Statement of Intent to Pay Prevailing Wages, executed by the subcontractor or lower-tier sub and approved by Washington State L&I, must be provided to the Project Engineer by the Contractor prior to payment for any work performed by that subcontractor or lower-tier sub. In addition, for Federal-aid projects, Form 420-004 EF (Contractor and Subcontractor or Lower-Tier Subcontractor Certification for Federal-aid Projects), must be submitted with the Request to Sublet.

Section 1-08.1 of the *Standard Specifications* defines what is not considered to be subcontracting. By default, any entity performing bid item work on the project is a subcontractor, unless: (1) they are the Prime Contractor, (2) an Owner furnished resource (such as WSP, utility owner or its contractor or consultant), or (3) they are specifically excluded from consideration as a subcontractor in Section 1-08.1. Do not be confused by the distinction between Professional Services and Subcontractors in the markups for force account work described in Section 1-09.6. Those provisions apply only to how the markup for overhead and profit is applied to force account work, and they have no relationship to the requirement for a Request to Sublet.

If a subcontractor wishes to further sublet a portion of its work to a lower-tier firm, the Contractor must submit the name of the lower-tier firm along with the request to sublet the work to the subcontractor. If more than one subcontractor on a project wants to utilize the same firm as a lower-tier subcontractor, separate requests are required. Section 1-08.1 of the *Standard Specifications* sets limitations on the amount of work a lower-tier sub may perform for each subcontractor. Section 1-08.1 of the *Standard Specifications* also sets forth the procedure for subletting portions of the project, and the percentage of the contract which may be sublet. The dollar value to be used for determining the amount of work that must be performed by the Prime Contractor is the total original contract amount less the amount of any specialty items which have been subcontracted. In order to ensure proper tracking and reporting of sublet information, the Project Office shall enter data from each request to sublet into the CCIS database. When the Project Office is in a situation where the CCIS database is not utilized during the administration of a project (i.e. Emergency Contracts, State Aid Contracts, etc.), and requires the “hand calculation” of the percentage of amount sublet, the percentage will be calculated for all items except specialty items, using the amount shown on the Request to Sublet or the bid amount whichever is smaller.

When Condition of Award items are sublet, ensure that the total amount is equal to or greater than the amount in the Condition of Award letter and that the Condition of Award items will be sublet to the proper Condition of Award subcontractor. If a bid item shown on the Condition of Award letter is not sublet to the proper D/M/WBE, then the request cannot be approved until the contract is changed.

1-2.4G(1) Owner-Operators of Trucks and Other Hauling Equipment

Bona fide owner-operators of trucks and similar construction hauling equipment, who are *independent contractors* performing bid item Work, are considered to be subcontractors and shall adhere to all requirements of Standard Specification 1-08.1 and FHWA 1273.

WSDOT has received requests from Prime Contractors to use a sub-contracted owner-operator to “broker” or “rustle-up” other owner-operators to perform contract Work. From a business standpoint, this may be practical. However, in order to comply with 23 CFR 633, 23 CFR 635.116 and *Standard Specification* 1-08.1, a Prime Contractor or a subcontractor shall perform a defined percentage of the Work with their own organization.

A “broker” is identified as “one who acts as an intermediary in a sale or other business transaction between two parties.” An approved subcontracted owner-operator may act as a “broker” and can certainly “rustle-up” additional owner-operators to perform portions of the Work, however, those other owner-operators can only be one of three entities: 1) a lower tiered subcontractor to the original sub-contracted owner-operator, 2) another subcontractor to the Prime Contractor, or, 3) an employee to the Prime or the original owner-operator subcontractor. All required contractual obligations would be the same depending upon the relationship. A true “broker” may not own tools and equipment and therefore would not be considered a subcontractor since they would not be performing any portion of the Work other than the required documentation.

Individual owner-operators operating leased trucks can be considered owner-operators if they provide evidence, satisfactory to the Project Engineer, that they have a bona fide lease agreement. If the vehicle is being leased, ask to see the lease agreement. Existence of a bona fide lease agreement depends on evidence that the individual claiming to be an owner-operator is independently established in his/her own trucking business and that he/she bears ultimate responsibility for operation of the unit and is wholly responsible for cost items such as:

- Maintenance.
- Insurance (Comprehensive, collision, liability, etc.)
- Permits, base plates, licenses and taxes
- Fuel
- Oil
- Major and minor repairs
- Ferry charges and tolls
- Other Driver's remuneration

It also must be demonstrated that there is no close or continued supervision of the operation of the truck by the company leasing the truck. This means that the owner-operator may not work on a project upon which the lessor is a Prime or subcontractor.

1-2.4H Contractors' Shop Plans and Working Drawings

In general, all shop drawings and supplemental details submitted by the Contractor should be checked, in detail, for conformance to all contract requirements before forwarding on for approval or further actions by others. A Change Order is required for any deviation from the contract plans. Any conflicts with the contract plans that have been detected or revisions that may be desired by the Project Engineer should be noted on one copy of the drawings being forwarded to Headquarters for approval. If Change Orders to cover any deviations from the contract plans have been issued, or are being processed, those changes should also be noted.

Figure 1-6 is a list of many of the most common shop plans and drawings, and includes references to the specifications that require them and the section of this manual that covers the procedures for processing them. Use Form 410-025 to transmit all listed bridge and structure plans to the Bridge and Structures Engineer.

The Project Engineer should maintain a log of all shop plans or other drawings received for each contract.

Shop plans for items that conform to the contract plans or a standard plan, except those listed in Figure 1-6, should be checked and approved by the Project Engineer.

1-2.4I Relief of Responsibility for Completed Work and Relief of Responsibility for Damage by Public Traffic

Section 1-07.13(1) specifically designates the Contractor as being solely responsible for the completed work or material until the entire improvement has been completed. All work and material, including change order work, is at the sole risk of the contractor and when damaged must be rebuilt, repaired, or restored. When these damages occur to either the permanent or temporary work, and have occurred prior to the contract Completion Date, the costs for these repairs shall be entirely at the Contractor's expense. However, the specification does provide the contractor exceptions for causes that are generally beyond the contractor's control.

While the Contractor is fully responsible for the work and materials, the section does provide the contractor some options for relief. Relief is broken into 2 categories. The first category being relief of maintenance and protection for portions of works that have been completed. The second category is for relief of damage caused by the public when it is necessary that the public use the facility during construction. Both options for relief have specific criteria in order to exercise them. While a brief explanation of each option is provided, the Project Engineer should review the entire Section 1-07.13 of the *Standard Specifications* to ensure that the extent of responsibilities are understood and that any relief from responsibility is granted in accordance with those provisions.

Section 1-07.13(2) provides relief to the Contractor from maintaining and protecting specific portions of contract work as they are completed. The Contractor must submit a written request for relief to the Project Engineer. Before granting any

relief, the Project Engineer will review the request to ensure that the items of work noted conform to the requirements and limitations outlined in Section 1-07.13(2) of the *Standard Specifications* and have been fully completed in all respects of the contract. The Regional Construction Manager or designee may approve these requests for relief. Relief may be granted for several specific items, for example: "Item 17, Beam Guardrail, Type I; Item 18, Beam Guardrail Anchor Type I; etc." Relief may also be granted for all work except certain items, for example: "All work except Item 38, Electrical." the approval of the Contractor's request must be in writing.

When it is necessary for public traffic to utilize a highway facility during construction, Section 1-07.13(3) of the *Standard Specifications* provides relief of responsibility to the Contractor for damage caused to the permanent work by the public traffic. When the conditions specified in this section are met, the Contractor is automatically relieved of this responsibility. However, this section does not provide relief for damage caused by vandalism or other causes. The Contractor will resume full responsibility for both temporary and permanent work if traffic is relocated to another section of roadway. This responsibility will again continue until contract completion unless the section is reopened to public traffic or the Contractor is granted relief under 1-07.13(2).

The first paragraph of Section 1-07.13(3) refers to damage to "permanent work". This refers to work included in the contract that is being constructed in accordance with the requirements noted in the plans and specifications and is damaged. The intent is to exclude equipment, temporary facilities and temporary materials such as formwork and falsework and "Temporary Traffic Control Devices".

1-2.4J Protested Work

Occasions may arise where the contract may not have fully or clearly defined a work activity or financial responsibility. In these cases, the Project Engineer may determine that, in order to avoid delay of other critical work, protect the traveling public, or other critical circumstances, it may be necessary to direct the Contractor to proceed immediately to complete the work. In some instances, this order may be against the Contractor's wishes. While acknowledging the Contractor's verbal protest, the Project Engineer should again direct the contractor to proceed with the work in accordance with Section 1-04.5 of the *Standard Specifications*. The Contractor should also be advised that, as a separate action, they should follow the guidance in this same section for protest and protest resolution. While these provisions require the Contractor to keep accurate records for completing the protested work, it is not advisable for the Project Engineer to rely on these records to determine what may have taken place when trying to verify costs for protested work many months later. In order to help document the Contractor's work, the form "Report of Protested Work" (DOT Form 422-007) was developed as a tool for the Project Engineer's use.

1-2.4K Metric Designed Projects Administered with English *Standard Specifications*

Some recent projects, whose plans were developed using Metric dimensions, are being administered utilizing the English version of the *Standard Specifications*. Any dimensions in the *Standard Specifications*, Amendments, or Special Provisions that are expressed in English terms are to be converted, utilizing a precise arithmetical “hard” conversion method, to equivalent Metric units, when necessary, to be compared to the contract documents, field conditions or Contractor’s equipment or operations.

The Department still has some Metric projects “on the shelf”. There are also Metric jobs being developed for other agencies, such as Sound Transit. Since there is no current Metric *Standard Specification* Book, those jobs will be administered using the English book. Several General Special Provisions will be included to accomplish this. These provisions require that, whenever an English dimension or value in the specifications needs to be compared with a contract plan or provision, a field condition or measurement or with the Contractor’s equipment or operation, the necessary conversion will be made utilizing a precise arithmetical “hard” conversion method.

To accomplish the conversion to English specifications, a series of General Special Provisions have been developed to replace those Metric specifications that contain soft conversions. In all cases, the English specifications have been left intact so that, if items must be added through change order, English units may be utilized with the reference to the *Standard Specifications* without including all the Metric specs in the change order.

The old Metric books contained provisions for “soft” or approximate conversions for a number of elements (bolts, re-steel, etc.). These have been converted to General Special Provisions which will be included with all Metric plan sets. This will allow these exceptions to the “hard” conversion rule noted above. Metric plan sets will have Metric pay units. Change orders on Metric plan set jobs will automatically reference the English specifications and will require English units.

When making payment to the contractor, the project office should measure and pay for the bid item, either Metric or English, indicated as the unit of measure in the contract plan or change order. For example, if the contract calls for “Clearing and Grubbing” to be paid for by the hectare, then the engineer should instruct his crew to measure and pay for the work performed in metric units. The opposite would apply if a change order was written for the project utilizing the English specifications for clearing and grubbing. In that case, the bid item would be measured and paid for in English units (by the acre).

If a situation arises when a conversion is required from English to Metric for an interpretation, a measurement or a payment, the conversion should be made utilizing a “hard” conversion factor. In the case of a payment, the level of precision of the factor will be such that the resulting payment will not vary from the true calculated value by more than one dollar.

1-2.4L Emergency Work Performed Under the Contract

When a natural disaster impacting a wide area strikes, WSDOT may utilize an existing construction Contract in order to restore essential travel, minimize damage or protect remaining facilities. RCW 47.28.170(2) allows WSDOT to contract this work on a negotiated basis provided (a) the cost does not exceed force account rates for the work performed and (b) the contract does not to exceed thirty working days. There must be an emergency declaration by the appropriate authority, the Project Engineer must complete a Detailed Damage Inspection Report (DDIR) and the Project Engineer must contact the Regional Program Manager, since this work will initially be funded by state funds. The Project Engineer should follow the guidance provided in the *Emergency Relief Procedures Manual*, M 3014.01.

Emergency repair work, when performed by the Contractor under an existing Federal-Aid Contract, may be eligible for Emergency Relief funding. In order to qualify for Emergency Relief funding, the repair work must be the result of a natural disaster over a wide area, such as a flood, an unusually severe storm or a landslide. The work must be demonstrated to be beyond the Contractor’s responsibility and not work that has already been scheduled for repair or replacement of deficient structures. Only the work required to protect and open the roadway is eligible for Emergency Relief funding.

Adding emergency work to a State funded contract would require the addition of all Federal-Aid specifications, and is not practicable. It is however acceptable to hire the existing contractor to perform emergency work at the same location under a separate emergency force account contract which would include all the Federal requirements.

1-2.5 Contract Time

1-2.5A General

The contract duration specified for physically completing the contract is stated in the contract provisions normally under the general special provision “Time For Completion.” Although there are exceptions, the guidance in this chapter pertains to contracts in which time is accounted for in terms of working days.

The Contractor may begin work as soon as the contract is executed and shall prosecute the work diligently until physical completion has been reached.

The Region will be notified by telephone on the day the contract is executed by WSDOT. Because it can take several days for the executed contract to reach the Contractor, the Region should immediately provide the Contractor with verbal notification of the date of execution so that the Contractor may order materials and prepare to mobilize onto the project and begin work. The date the contractor actually begins work on the project is to be noted and entered into CCIS.

Between the execution of the contract and the acceptance by the State Construction Engineer, the Project Engineer will likely encounter time-related issues. These will be documented through Weekly Statements of Working Days (Section 1-08.5), Suspensions of Work (1-08.6), Protested Work (Section 1-04.5), and Time Extensions (Section 1-08.8).

Contract Completion Milestones

There are two milestones that establish the end of contract time. They are defined in Section 1-01.3 of the *Standard Specifications* as Substantial Completion and Physical Completion. These two milestones are discussed in greater detail later in this chapter.

1-2.5A(1) Progress Schedules

The requirements for progress schedules are specified in Section 1-08.3 of the *Standard Specifications*. A copy of the specified reference, *Construction Planning and Scheduling, Second Edition*, published by the Associated General Contractors of America, has been sent to each Project Office and each Region Construction Office. One of three progress schedules will be specified in the contract. Two types of progress schedules are identified in the *Standard Specifications*, Type A and Type B. A third type may be inserted in the contract as a General Special Provision specifying a Type C Progress Schedule. The three types of progress schedules represent levels of job complexity. Type A being the simplest and easiest to produce and Type C being the most complex. Application is such that the complexity of the project (whether it be timing, coordination or the work itself) will be reflected in the complexity of the schedule.

In addition, a preliminary schedule is required on contracts requiring Type B or C Progress Schedules. Preliminary progress schedules show the work to be accomplished within the first 60 working days. As always the contract provisions may contain requirements that add to, or supersede, all or parts of Section 1-08.3 to allow for special circumstances.

There are four basic reasons that we ask for a schedule:

- To better understand the contractor's plan to deliver the project within the time allowed
- To plan our work force and other resource requirements
- To advise the public and executive staff of major milestones
- And to enable us to actively manage impacts to the contract

Progress schedules should have sufficient detail such that the progress of the work can be evaluated accurately at any time during the performance of the contract. The owner is obligated by contract to return the schedule for correction or approve it within 15 calendar days of receipt. Approval requires that the schedule complies not only with Section 1-08.3 but it demonstrates compliance with other contract requirements such as interim completions, staged work, order of work, etc. Periodically as warranted by progress, delays or changes, the Project Engineer should review the schedule for accuracy and progress of work. If it is determined that the current schedule does not provide the required information or is no longer accurate, a Type B supplemental schedule update may be requested from the Contractor. Monthly updates are required when Type C progress schedules are specified, and the cost of the updates is included in the Lump Sum price of the bid item.

The cost of Type B schedule updates is not included in the Lump Sum price of the bid item. When work is added to the project or the work method is changed at the request

of the contracting agency, the respective cost to update the Type B progress schedule should be included in the change order. Type B schedule updates driven by the contractor's actions shall be provided to the contracting agency and are considered incidental to other work. No payment is made for Type A Progress Schedules or Type A schedule updates. Type B and C Progress Schedules are paid as a lump sum. Eighty percent of the lump sum payment is paid upon approval of the initial schedule. The remaining portion is paid when eighty percent of the original work is completed, provided updates have been provided as requested. Weekly look-ahead schedules are considered incidental to other items of work in the contract and therefore are not paid for separately.

When the Contractor has failed to provide a required schedule, the Engineer may:

- Withhold payment for the Type B or Type C schedule if it is not received (but not for other conforming work).
- Withhold all progress payments for failure to comply with the terms of the contract as specified in Section 1-09.9 (this should be a rare event).
- Suspend work and continue to charge each day as workable (this should only be implemented when the Agency is harmed by lack of knowledge of the contractor's intended approach to the work).

In extreme cases, the Agency may determine that the Contractor is in breach of contract according to Section 1-08.10 (usually accompanied by other serious breaches).

When lacking a progress schedule, the Engineer must base progress on the information available and their best judgment. According to Section 1-08.5, the Contractor may protest working day charges, but must support the protest in sufficient detail to enable the Engineer to ascertain the basis and amount of time disputed. This provides another opportunity for the PE to communicate our need for a progress schedule.

1-2.5A(1) Review and Approval of Progress Schedules

It is the responsibility of the Project Engineer to insure that the Contractor submits a correct and complete progress schedule in the time specified. Progress schedules must meet the general as well as type specific criteria. Once it is determined that the progress schedule submitted is of the type specified by the contract, the Project Engineer should evaluate the schedule to determine if it meets the requirements of Section 1-08.3 of the *Standard Specifications*, the Special Provisions and the Contract.

(I) GENERAL REQUIREMENTS

- The progress schedule must include all activities necessary to physically complete the project. By definition, activities consume time and usually consume resources. Activities like concrete curing time and slope staking earthwork may be rolled-up into the overall duration of the activity.
- The progress schedule must show the planned order of work in logical sequence, and in compliance with any requirements of the contract. The reviewer should remember that some work is sequenced by

factors inherent in the work, but the Contractor may sequence the work by their preference as long as the project is completed within the authorized time and in conformance to the contract.

- The progress schedule must show durations of work activities in working days. Except for defining nonworking days, the calendar has no relationship to administering contract time. An activity may be stalled by unsuitable weather for days or weeks and remain “on schedule”.
- The progress schedule must show activities in durations that are reasonable for the intended work. Since durations of work are a function of resource allocation, the Project Engineer may be required to estimate production rates using estimating manuals, experience or other resources, or to ask the Contractor to explain their planned resource allocation to support the duration.
- The progress schedule must define activities in sufficient detail that progress of individual activities may be evaluated on a daily basis. The reviewer should keep in mind that the level of detail required in a progress schedule is driven by the amount of precision required to perform and monitor the work. For example a single activity that represents several miles of grading may not provide adequate detail, and may need to be subdivided into smaller activities described by station limits.
- The progress schedule must show the physical completion of all contract work within the authorized contract time.

WSDOT may accept a Progress Schedule indicating and early physical completion date but cannot guarantee that WSDOT’s resources will be available to meet an accelerated schedule.

If the progress schedule does not provide the required information, it should be returned to the Contractor for correction and resubmittal. Because the *Standard Specifications* do not specify timelines for resubmittal, the Engineer should provide a reasonable amount of time for the Contractor to revise and resubmit the schedule, and advise the Contractor of the expected date of resubmittal.

(II) TYPE A PROGRESS SCHEDULE

Type A Progress Schedules are required for any projects that do not include the bid item for Type B Progress Schedule or Type C Progress Schedule. The Contractor is required to submit five copies of Type A Progress Schedules to the Engineer no later than the first working day of the project. This may be a critical path method (CPM) schedule, a bar chart, or other standard schedule format, such as fenced bar charts, linear schedules, PERT networks and others. These scheduling methods are described in detail in the benchmark document “Construction Planning and Scheduling, Second Edition”, a copy of which has been provided to each Project Office and each Region Construction Office. The Contractor is required to identify the critical path of the project, because a bar chart schedule does not rely on network calculations to determine the critical path.

The Engineer will evaluate this schedule and approve or return it for correction within 15 calendar days of receiving the submittal.

(III) TYPE B PROGRESS SCHEDULE

Type B Progress Schedules are required for all projects containing the bid item for Type B Progress Schedule.

The Contractor is required to submit a preliminary schedule to the Engineer no later than five calendar days after the date the contract is executed. Preliminary schedules must meet all requirements of a Type B Progress Schedule except that they may be limited to activities occurring in the first 60 days of the project.

The Contractor is required to submit five copies of the Type B Progress Schedule to the Engineer no later than 30 calendar days from the date that the contract is executed. This schedule must be a critical path method (CPM) schedule developed by the Precedence Diagramming Method and may employ restraints provided the restraints do not alter the network logic or critical path. As a minimum the Type B Progress Schedule must show:

- The Contract Number and Title
- Construction Start Date
- Critical Path
- Activity Description
- Milestone Description
- Activity Duration
- Predecessor Activities
- Successors Activities
- Early Start and Early Finish for each activity
- Late Start and Late Finish for each activity
- Total Float and Free Float for each activity
- Physical Completion Date
- Data Date

(Many of these terms are defined in “Construction Planning and Scheduling.”)

The reviewer should watch for fixed date constraints that override network logic and force activities to become critical. Specific work windows or “open to traffic” milestones may legitimately influence sequence and duration of related activities. Resource constraints (such as availability of a large crane) may be preferential and may be explained by the Contractor if necessary. Fixed completion milestones for work that is susceptible to unsuitable weather are inappropriate because completion may be extended by the determination of unworkable days.

It is not unusual to see dual critical paths on a CPM schedule, nor is it prohibited. Multiple critical paths are generally very short in duration. Lengthy occurrences of parallel critical activities should be cause for careful scrutiny of activity durations and sequencing.

The Engineer will evaluate this schedule to insure that all required information is included in the schedule, check the network calculations, and approve or return it for correction within 15 calendar days of receiving the submittal.

(IV) TYPE C PROGRESS SCHEDULE

Type C Progress Schedules are required for all projects that include the bid item for Type C Progress Schedule. The Contractor is required five copies of a preliminary Type C Progress Schedule to the Engineer no later than the first working day (as defined in Section 1-08.5 of the *Standard Specification*). The preliminary schedule must meet all requirements of a Type C Progress Schedule and of Section 1-08.3(1) except that it may be limited to activities occurring within the first 60 working days.

The Contractor is required to submit five printed copies of a Type C Progress Schedule no later than 60 calendar days after the contract is executed. If the Contractor can demonstrate that they are unable to determine resource availability, and that this lack of information prevents them from preparing a reasonable schedule, the Engineer may allow an additional 30 calendar day for schedule submittal.

Each time that a preliminary schedule, Progress Schedule, or Schedule Update is submitted, the Contractor is required to provide the Engineer with an electronic copy of that schedule, on CD-ROM in Primavera Project Planer Enterprise Version, P3e/c or P3 format.

Type C Progress Schedules must contain all of the information required of a Type B schedule, and the following additional information:

- A timed scale logic diagram.
- Activities for traffic detours and closures.
- Milestones for required delivery of State furnished materials (if any)
- Activities for State furnished traffic controller resources (if any).
- Activities for fabrication of materials with longer than 120 calendar days lead time.
- Fixed constraints shall be identified on the activity listing and be supplemented with a written narrative describing why the constraint exists.
- Monthly schedule updates.

If requested by the Engineer, the Contractor shall provide a written narrative describing assumed production rates and planned resource allocation to support activity durations.

(V) WEEKLY LOOK-AHEAD SCHEDULE

Weekly Look-Ahead Schedules are required for all projects. The Contractor is required to submit a Weekly Look-Ahead Schedule, for each week that work is to be performed on the project, showing Contractor and all subcontractor activities for the next two weeks. The Weekly Look-Ahead Schedule must show:

- Description of the work
- Duration of the work.
- Sequence of the work.
- Planned hours of work.

The specification requires that Look-Ahead Schedules show the contractor's planned hours of work. This information is necessary to evaluate the results of unsuitable weather on the critical path and to assess working days charges correctly.

This schedule is to be submitted by mid-week of the week preceding the scheduled work, or other mutually agreed upon submittal time.

(VI) SCHEDULE UPDATE

Schedule Updates are required for all projects. The Engineer may request schedule updates when any of the following events occur:

- A change that affects the critical path.
- The sequence of work is changed from that in the approved schedule.
- The project is significantly delayed (10 days or 10 percent of the original contract time, whichever is greater).
- An extension of contract time is requested.

It is important to note that schedule updates are only required when they are requested by the Project Engineer, when a contractor submits a request for a time extension, or monthly in the case of a Type C Progress Schedule. The Project Engineer may request an update when any of the triggers occurs, but may choose to forego the update if the impacts to the schedule are readily evident.

The Contractor is required to submit five copies of the Schedule Update for approval within 15 calendar days of a written request, or when an update is required by contract provisions.

In addition to all other requirements, a Schedule Update must show:

- Actual duration and sequence of as-constructed work activities, including changed work.
- Approved time extensions.
- Construction delays or other conditions that affect the progress of work.
- Modifications to sequence or duration of remaining work.
- Physical completion of all remaining work within the remaining time authorized.

It is important to know the difference between an as-planned schedule and an as-constructed schedule. All updates must show the as-constructed sequence and actual durations of all activities prior to the status date.

When the need for a schedule update is triggered by an event that is the contractor's doing, they are responsible for the cost. When WSDOT causes an event or requests an update for their need, payment will be made as part of an equitable adjustment. When WSDOT is adding work or time by means of a change order, the price of the schedule update can be included as part of the work.

Any unresolved request for time extension must be shown by assuming that no time extension will be granted, and by showing the effects to follow-on activities necessary to physically complete the project within the currently authorized time for completion.

| Working Drawing, Shop Plan or Submittal Type | Const Manual References | Standard Spec or Other References | Number of Paper Copies (Contact Bridge & Structures to discuss the option of electronic Submittals) | Reviewer Prior to Approval | Approving Authority | PE Distribution of approved drawings (surplus copies stay @ PE) | Notes |
|--|-------------------------|---|--|--|------------------------------|---|---|
| Supplemental Drawings (Shop Plans for Contract or Standard Plan Item) | 1-2.4H | 1-01.3 | 6 sets to Project Engineer | | Project Engineer | 2 sets to Contractor 1 set to Fabrication Inspector | |
| Calculations for Overload of Structure | None | 1-07.7(2) 6-01.6 6-01.9 | 3 set to Project Engineer | Bridge & Structures Engineer | Bridge & Structures Engineer | 2 sets to Contractor | PE Stamp required. |
| Mfg. Specification for Portable Temporary Traffic Control Signal | None | 1-10.3(3)K | 3 set to Project Engineer | | Project Engineer | 2 sets to Contractor | |
| Prefabricated Vertical Drainage Wick Submittals | None | 2-03.3(14)H | 3 set to Project Engineer | | Project Engineer | 2 sets to Contractor | |
| Calculation for Backfilling Abutment Prior to Superstructure Placement | None | 2-03.3(14)I | 3 set to Project Engineer | Bridge & Structures Engineer & Geotechnical Engineer | Bridge & Structures Engineer | 2 sets to Contractor | PE Stamp Required |
| Blasting Plan | None | 2-03.3(2) | 3 set to Project Engineer | | Project Engineer | 2 sets to Contractor | |
| Excavation Slope Working Drawings and Calculations | None | 2-09.3(3)B | 3 set to Project Engineer | Geotechnical Engineer | Project Engineer | 2 sets to Contractor | PE Stamp Required for Temporary Slopes Greater than 20 Feet in Height |
| Cofferdams, Shoring, Cribbs, and Trench Boxes | 6-1.5 | 2-09.3(3)D 2-09.3(4) 6-01.9 6-02.3(16) | 6 sets to Bridge & Structures 2 sets to Project Engineer TRENCH BOXES 3 sets to Project Engineer | Bridge & Structures Engineer & Geotechnical Engineer | Bridge & Structures Engineer | 2 sets to Contractor 1 set to Region Const | PE Stamp is Required. 4 additional sets to Bridge if RR is involved (per RR) 6 additional if US Bureau of Reclamation is involved |
| Falsework, Forming, and Bracing Plans (including design calculations) | 6-1.5 | 6-02.3(16) 6-02.3(17)F | 6 sets to Bridge & Structures 2 sets to Project Engineer FOR PREAPPROVAL 1 set Plans & 2 sets design calculations to Bridge & Structures 1 set Plans & 1 set design calculations to Project Engineer | Bridge & Structures Engineer | Bridge & Structures Engineer | 2 sets to Contractor 1 set to Region Const | PE Stamp is Required. 4 additional sets to Bridge if RR is involved (per RR) 6 additional if US Bureau of Reclamation is involved |
| Girder Erection Plans (Including falsework and stress calculations) | None | 6-02.3(16) and 6-02.3(25)N 6-03.3(7)A | 6 sets to Bridge & Structures 2 sets to Project Engineer | Bridge & Structures Engineer | Bridge & Structures Engineer | 2 sets to Contractor 1 set to Region Const | PE Stamp is Required. 4 additional sets to Bridge if RR is involved. (per RR) |

Shop Plans & Working Drawings
Figure 1-6

| Working Drawing, Shop Plan or Submittal Type | Const Manual References | Standard Spec or Other References | Number of Paper Copies (Contact Bridge & Structures to discuss the option of electronic Submittals) | Reviewer Prior to Approval | Approving Authority | PE Distribution of approved drawings (surplus copies stay @ PE) | Notes |
|---|-------------------------|--|--|---|--|---|--|
| Welding Reinforcing Steel | 6-2.6D | 6-02.3(24)E | 5 welding procedures to Bridge & Structures 2 welding procedures to Project Engineer | Bridge & Structures Engineer | Bridge & Structures Engineer | 2 sets to Contractor 2 sets to Fabrication Inspector | No mention in spec of Bridge & Structures or number of drawings |
| Shop Detail Plans of Prestressed Concrete Girders, Prestressed Structures, Precast Conc Piles | 6-2.7A | 6-02.3(25)A None for Piles | 5 sets to Bridge & Structures 2 sets to Project Engineer SPliced GIRDERS 7 sets to Bridge & Structures 1 set to Project Engineer | Bridge & Structures Engineer | PE approval standard series I girders and concrete piling on standard plans E-4 & E-4a - all other prestressed concrete products and precast piles to Bridge & Structures for approval | 1 set to Contractor 2 sets to Fabrication Inspector | 6-02.3(16)B is for the formwork plans for preapproval |
| Post-Tension Shop Drawings | 6-2.8 | 6-02.3(26)A | 7 sets to Bridge & Structures 2 set to State Bridge Const. Engineer 2 sets to Project Engineer | State Bridge Const. Engineer & Bridge & Structures Engineer | Bridge & Structures Engineer | 1 set to State Const. 2 sets to Contractor 1 set to Region Const. | |
| Precast Concrete Panels | None | 6-02.3(28)A 6-12.3(1) | 7 sets to Bridge & Structures 2 sets to Project Engineer | Bridge & Structures Engineer | Bridge & Structures Engineer | 1 set to State Const. Engr. 2 sets to Contractor 1 set to Fabrication Inspector | Additional sets for RR not mentioned in spec. |
| Welding Structural Steel (Submitted with Shop Drawings) | 6-3.6C | 6-03.3(25) | 8 sets to Bridge & Structures 2 sets to Project Engineer | Bridge & Structures Engineer | Bridge & Structures Engineer | 1 Set to Region Const. 2 sets to State Materials Lab 2 sets to Contractor | 4 additional sets to Bridge if RR is involved. (per RR) |
| Shop Plans for Structural Steel for Bridges (Expansion Joints, Metal Bridge Rails, Bridge Drains, Etc.) | 6-3.1 | 6-03.3(7) 6-06.3(2) Special Provisions | 8 sets to Bridge & Structures 2 sets to Project Engineer | Bridge & Structures Engineer | Bridge & Structures Engineer | 1 set to Region Const. 2 sets to State Mat'l's Lab 2 sets to Contractor | 4 additional sets to Bridge if RR is involved. (per RR) |
| Treated Timber Structures | 6-4.1 | 6-04.3(3) | 6 sets to Bridge & Structures 1 set to Project Engineer | Bridge & Structures Engineer | Bridge & Structures Engineer | 2 sets to Contractor 1 set to Fabrication Inspector | |
| Welding Steel Piling | 6-5.6 | 6-05.3(6) 6-03.3(25) | 8 sets to Bridge & Structures 2 sets to Project Engineer | Bridge & Structures Engineer | Bridge & Structures Engineer | 2 sets to Contractor 2 sets to Fabrication Inspector | Weld splices of steel casing for cast-in-place conc. Piles shall be the Contractor's responsibility 4 additional sets to Bridge if RR is involved. (per RR) |
| Pile Driving Equipment Adequacy Submittals | | 6-05.3(9) | 6 sets to Bridge & Structures 2 sets to Project Engineer | Geotech. Engr., Bridge & Structures and State Construction Engr. (Bridge) | Bridge & Structures Engr. | 2 sets to Contractor | |

| Working Drawing, Shop Plan or Submittal Type | Const Manual References | Standard Spec or Other References | Number of Paper Copies (Contact Bridge & Structures to discuss the option of electronic Submittals) | Reviewer Prior to Approval | Approving Authority | PE Distribution of approved drawings (surplus copies stay @ PE) | Notes |
|---|-------------------------|-----------------------------------|---|--|--|---|---|
| Painting Plan | None | 6-07.3(2) | 3 sets to Bridge & Structures 2 sets to Project Engineer | Bridge & Structures Engineer, State Construction Engr. (Bridge), | Bridge & Structures Engineer | 2 sets to Contractor | |
| Modified Concrete Overlays (Mix Design, Equipment Specifications and Procedures) | None | 6-09.3(2) | 3 sets to State Bridge Const. Engineer 2 sets to Project Engineer | State Bridge Const. Engr. | State Bridge Construction Engr. | 2 sets to Contractor | |
| Shaft Installation Plan for Noise Walls, Soldier Pile Walls, Signal Standard Foundations, and Luminaire Bases | 6-2.3E | 6-12.3(1) 6-16.3(2) | 4 sets to Bridge & Structures 1 set to Project Engineer | Bridge & Structures Engineer, State Construction Engineer (Bridge), & Geotech. Engr. | Bridge & Structures Engineer | 2 Sets to Contractor | |
| Structural Earth Wall Submittals | None | 6-13.3(2) | 3 sets to Bridge & Structures 2 sets to Project Engineer | Bridge & Structures Engineer, & Geotech. Engr. | Bridge & Structures Engineer | 2 sets to Contractor | PE Stamp Required |
| Geosynthetic Retaining Wall Plans (Includes Std. Plan, Type 1-6 Walls) | None | 6-14.3(2) | 3 sets to Bridge & Structures 2 sets to Project Engineer | Bridge & Structures Engineer, & Geotech. Engr. | Bridge & Structures Engineer | 2 sets to Contractor | |
| Soil Nail Walls | None | 6-15.3(3) | 3 sets to Bridge & Structures 2 sets to Project Engineer | Bridge & Structures Engineer, & Geotech. Engr. | Bridge & Structures Engineer | 2 sets to Contractor | Include State Bridge Const. Engr. if shotcrete facing is permanent (6-18.3(1)) Experience criteria to be verified by Project Engineer. |
| Soldier Pile Walls | None | 6-16.3(2) | 3 sets to Bridge & Structures 2 sets to Project Engineer | Bridge & Structures Engineer, & Geotech. Engr. | Bridge & Structures Engineer | 2 sets to Contractor | PE Stamp Required |
| Permanent Ground Anchor Submittals | None | 6-17.3(3) | 3 sets to Bridge & Structures 2 sets to Project Engineer | Bridge & Structures Engineer, & Geotech. Engr. | Bridge & Structures Engineer | 2 sets to Contractor | PE Stamp Required |
| Roadside Plant/Weed & Pest Control Plan | None | 8-02.3(2) | 4 sets to Project Engineer | | Project Engineer | 2 sets to Contractor 1 set to Region Const. | Signed by Licensed Chemical Pest Control Consultant |
| Shop Plans for Light Standard and Traffic Signal Standards | 8-20.2B | 8-20.2(1) | 6 sets to Bridge & Structures 2 sets to Project Engineer | Bridge & Structures Engineer | Bridge & Structures for light standards and Types II, III, IV, V and SD signal standards. Project Engr for Types PPB, PS, & I signal standards shown on Standard Plan J-7a. | 2 sets to Contractor 2 sets to Fabrication Inspector | Shop drawings are required for all signal standards and for those light standards without pre-approved plans. (per Std. Spec) |

| Working Drawing, Shop Plan or Submittal Type | Const Manual References | Standard Spec or Other References | Number of Paper Copies (Contact Bridge & Structures to discuss the option of electronic Submittals) | Reviewer Prior to Approval | Approving Authority | PE Distribution of approved drawings (surplus copies stay @ PE) | Notes |
|--|-------------------------|--|--|---|---|---|---|
| Shop Plans for Sign Structures | 8-21.3 | 8-21.3(9) A refers to Section 6-03. | 8 sets to Bridge & Structures 2 sets to Project Engineer | Bridge & Structures Engineer | Project Engineer for Standard Plans G2 through G9a Bridge & Structures for special design sign structures or sign fittings | 2 sets to Contractor 2 sets to Fabrication Inspector | 4 additional sets to Bridge if RR is involved. (per RR) |
| Column Jacket Shop Drawings & Installation Plans | None | See BSP 02300403. GB6 02300404. GB6 | 8 sets to Bridge & Structures 2 sets to Project Engineer | Bridge & Structures Engineer, & Geotech. Engr. | Bridge & Structures Engineer | 2 sets to Contractor 1 set to Fabrication Inspector | PE Stamp required. |
| Form Liners (Various patterns per GSP) | None | See GSP 0231405.GB6 | 2 sets to Bridge & Structures Architect 2 sets to Project Engineer | Bridge & Structures Architect | Bridge & Structures Architect | 1 Set to Region Const 2 sets to Contractor | Include 2ft X 2'ft sample with drawing to Bridge & Struct. Architect |
| 3-Sided Structures | None | See GSP 023281.GR6 | 8 sets to Bridge & Structures 2 sets to Project Engineer 2 sets design calculations to Bridge & Structures | Bridge & Structures Engineer, & Geotech. Engr. | Bridge & Structures Engineer | 2 sets to Contractor 1 set to Fabrication Inspector | PE Stamp required. |
| Project Specific Powder Coating Plan and Materials Submittals | None | See Special Provision | 3 Sets to Bridge & Structures. 1 Set to Project Engineer | State Materials Engineer (Fabrication Inspection), Bridge & Structures Engineer | Bridge & Structures Engineer | 2 Sets to Contractor 1 set to Fabrication Inspector | |
| Bridge Demolition Plans | None | See Special Provisions | 6 sets to Bridge & Structures 1 set to Project Engineer | Bridge & Structures Engineer | Bridge & Structures Engineer | 2 sets to Contractor 1 set to Region Const | PE Stamp is Required. |
| Shaft Installation Plan and Construction Experience for Bridges and Permanent Signing Structures | None | See Special Provisions | 3 sets to Bridge & Structures 1 set to Project Engineer | Bridge & Structures Engineer, & Geotech. Engr. & State Construction Engr. (Bridge). | Bridge & Structures Engineer | 2 Sets to Contractor | Construction Manual does not mention approval – only mentions meeting of all parties. |
| Precast Vaults | None | See Special Provisions | 3 sets to Bridge & Structures 2 sets to Project Engineer | Bridge & Structures Engineer, & Geotech. Engr. | Bridge & Structures Engineer | 2 sets to Contractor 1 set to Fabrication Inspector | |
| Pipe Jacking Plans | None | See Special Provisions | 3 sets to Bridge & Structures 2 sets to Project Engineer | Bridge & Structures Engineer, & Geotech. Engr. | Bridge & Structures Engineer | 2 sets to Contractor | |

1-2.5B Working Day Charges

The first working day will be established in accordance with Section 1-08.4 of the *Standard Specifications* or such other date as prescribed by the contract provisions. Section 1-08.4 indicates that time may start at a time different from that specified if “otherwise approved in writing”. Such other approval is intended only for very unusual circumstances, usually associated with mis-handling of contract documents. It will only be granted in consultation with Headquarters Construction. Time associated with each phase of work established in the contract is to be shown on the Weekly Statement of Working Days. The Project Engineer is to furnish a weekly statement advising the Contractor of the current status of working day charges against the contract. Weekly Statements are generated by the CCIS computer system. This statement is to be issued in accordance with Section 1-08.5 of the *Standard Specifications*. The purpose of this statement is to advise the Contractor about the Project Engineer’s decision for each passing day. The questions to be answered when determining if a day is chargeable are; is it a nonworking day (holiday or a day the contract does not allow critical work to advance)? was it a chargeable working day (critical work progressed uninhibited)? or was it an unworkable day (critical work delayed by weather or conditions caused by the weather)? in evaluating each day, the Project Engineer should take into consideration the following conditions:

1. The effect of inclement weather on critical activities.
2. The effect of conditions caused by inclement weather on critical activities.
3. Critical work restrictions imposed by the contract or the Project Engineer.

If any of the above conditions prevent work or reduce the Contractor’s efficiency on critical activities on the project, working day charges shall be adjusted accordingly. If the Contractor is able to continue work on critical activities but the efficiency is significantly reduced, a half day may be charged. When determining unworkable days the Project Engineer shall take into consideration the prolonged effects of weather events. If the contractor is required to divert resources from working on critical path activities due to the lasting effects of a weather event the Project Engineer may determine a half day, the whole day or several days as unworkable.

If the contract does not specifically define a working day, a working day will be considered a 24 hour period. The contractor establishes the hours of work in the Weekly-Look Ahead Schedule and the start of the day should be by mutual agreement. The contractor shall be charged for one day during the defined 24 hour period regardless of how many shifts are worked.

Section 1-08.5 grants the Contractor the right to protest working day determinations and working day charges determined by the Engineer. In the event the Contractor submits the required written protest within 10 calendar days following the date of the statement, the Project Engineer will analyze the information provided, and respond to the Contractor by either denying the protest or revising the Weekly Statement of Working Days.

The Project Engineer will complete Weekly Statements of Working Days throughout the course of the project, showing workable, nonworking and unworkable days as they occur. These statements will continue to be completed until the project has reached Substantial Completion and the Working Days assigned to the contract have been exhausted. Following are the three possible scenarios:

- The working days are exhausted prior to reaching Substantial Completion. Weekly Statements of Working Days continue until Substantial Completion.
- The working days are exhausted on the day Substantial Completion is achieved. Weekly Statements of Working Days cease upon Substantial Completion.
- The working days are not exhausted upon reaching Substantial Completion. Weekly Statements of Working Days continue until the working days are exhausted or until physical completion.

Upon Substantial Completion the Project Engineer will ensure that the date is entered into CCIS and is noted in the remaining Weekly Statements of Working Days. After Weekly Statements have stopped, comments concerning weather and other events beyond the Contractor’s control should be entered into the project diary. The effect of these conditions on remaining work and on the scheduled completion should also be noted.

If contract time is expressed in calendar days, then Section 1-08.5 becomes difficult to interpret and the contract special provisions will provide guidance for the charging of contract time.

1-2.5C Suspension of Work

When, in the judgment of the Project Engineer, inclement weather, or conditions caused by inclement weather, make it impracticable to achieve satisfactory results on a critical item of work, an order should be issued to suspend the affected portions of the contract work or the entire project. If at all possible, suspensions for weather should be made with the concurrence of the Contractor. If the Contractor does not agree to a weather suspension, the Project Engineer should consult with the Region Construction Manager before issuing a unilateral suspension.

In addition, subject to the agreement of the Contractor and the approval of the Regional construction manager, delays caused by other conditions beyond the control of the Contractor may also warrant an order to suspend work.

During suspensions of long duration, for example a winter shutdown, the publication of Weekly Statements may be suspended. Notices to suspend or resume work should be written. Forms 421-006 and 421-007 have been developed for this purpose. A letter may accomplish the same purpose. If it is determined that some items of noncritical work on the project could be continued unaffected by weather conditions, then those items may be excluded from the order to suspend work. The prime consideration for unworkable days or suspensions is always the ability to work on critical items.

In the event that a suspension of work for weather or for other reasons beyond the control of the contractor is necessary for an extended period of time, the Project

Engineer may recommend that the Contractor be relieved of routine maintenance during the period of suspension. Before WSDOT will assume the responsibility for maintenance, the Contractor must have taken all necessary actions to control erosion, pollution, and runoff prior to, and during, the shutdown period. The extent of the project area that will be maintained by WSDOT is the subject for a three party negotiation and agreement among the Project Engineer, the Maintenance Superintendent and the Contractor.

The suspensions described above are related to weather or other causes beyond the control of the Contractor. They apply only to critical work items and, therefore, always result in a determination of an unworkable day. If the Engineer and the Contractor agree to stop working on a noncritical item for one of these causes but to continue critical work, then the agreement should be noted in the records and weekly statements should be issued in the normal fashion.

The contract also gives the Engineer the right to suspend work on any part of the project when the Contractor is not complying with the contract's terms or the orders of the Engineer. This would be a significant action and, except in an emergency situation, should not be undertaken without the full and informed consent of the Region Construction Manager and the State Construction Office. If work is suspended under this contract provision, then weekly statements and the charging of workable days will continue in the normal fashion.

1-2.5D Extension of Time

In general time extensions are appropriate whenever the critical work is delayed due to an action or inaction of the contracting agency, or by a cause that is not the responsibility of the Contractor. Section 1-08.8 of the *Standard Specifications* includes a list of reasons that entitle the Contractor to a time extension, and a list of reasons for which no time extension will be granted. In all cases, the change or delay must delay critical work or an extension is not appropriate.

The contract requires the Contractor to identify a delay within 10 working days. If a delay is readily identifiable, the Project Engineer should enforce this provision. If the delay is not immediately apparent the time extension discussion should take place as soon as the delay is recognized. Before discussing a potential delay for which adequate notice was not given, the Project Engineer should discuss the situation with the Region Construction Manager to seek guidance. The Contractor should be encouraged to identify delays and bring them to the State's attention at the earliest opportunity. This allows the contracting agency to mitigate the delay by adding time, modifying the work or recovering the schedule. In the interest of actively managing a delay the project engineer may act unilaterally to address time if the contractor avoids the discussion.

If possible, all time associated with work added by change order should be addressed as part of the change order. If you are unable to come to agreement on the number of working days to add, the Region Construction Manager should be consulted concerning the need to unilaterally add time to the contract. Deferring the discussion of time in a change order to a later date should be a last resort. If the contractor is not

granted time for an item, they are required to complete the contract in the number of working days that remain. This may require that the contractor to accelerate their efforts, by adding additional crews, equipment or working longer hours or extra days. If these actions are taken as a result of the contracting agency not granting time extensions when the contractor is entitled to them, the cost for these items would be paid by the contracting agency. If you do choose to defer the time discussion to later, set a time frame during in which the decision will be made.

The State has a responsibility to inform the Contractor's surety whenever increased time is being considered and the current extension, combined with previous extensions, would exceed 20% of the original allotted time in the contract. This information could be represented by the Surety's signature on the change order that adds time, by a separate letter from the Surety, or by a notice letter direct to the Surety office. Such notice and surety consent is a legal requirement and will help maintain the State's rights to be protected by the performance bond.

Section 1-08.6 of the *Standard Specifications* provides under what circumstances the Contractor may be entitled to compensation. Anytime that a project is delayed for any cause, the Project Engineer and the Contractor should consider methods of mitigating the delay damage. A common approach is to pursue schedule recovery by allocating additional resources to the work to get the project back on schedule. When the Project Engineer suspects that the State may be responsible for the delay, then compensation for the mitigation efforts may be proposed.

Any time extension will be documented either in a change order with approval levels defined in Section 1-2.4C of this Manual or in a letter to the Contractor from the State Construction Office.

1-2.5E Substantial Completion

Substantial Completion may be granted when only minor, incidental items of work, replacement of temporary facilities or correction remain in order to physically complete the contract. In determining Substantial Completion, the Project Engineer should consider whether or not:

- The public has full use and benefit of the facility.
- Major safety features are installed and functional, including guardrail, striping, and delineation.
- Illumination, if required, is installed or a temporary system with equal functional capabilities is operating.
- Signals, if required, are installed or a temporary system with equal functional capabilities is operating.
- The need for temporary traffic control on a regular basis has ceased. Only minor traffic restrictions will be needed for the remaining work.
- The traffic is operating in its permanent configuration.

The Project Engineer is responsible for determining the Substantial Completion date. When this has been done, the Contractor will be notified by letter, specifically noting the date on which Substantial Completion was achieved. The Contract Administration and Payment System (CAPS) Unit of Accountability and Financial Service (AFS) should be

notified of substantial completion (e-mail to: caps@wsdot.wa.gov). In order to be in concurrence with Section (9-1.5) - Compliance Review for Materials Certification Process, the project engineer will also provide notification of Substantial Completion to the Headquarters Materials Laboratory Documentation Section.

1-2.5F Date of Physical Completion

The date on which the Project Engineer determines that all physical work has been completed is noted and then established as the date of Physical Completion. The Project Engineer will immediately notify the Contractor by letter of the date determined for Physical Completion. Copies of the letter will be sent to:

- The Railroad companies, if applicable.
- The Contract Administration and Payment System (CAPS) Unit of Accountability & Financial Services (AFS).
- Notification to the AFS, Contract Payments Section, should be by means of a copy of the letter sent by e-mail to: caps@wsdot.wa.gov.
- The Regional Local Programs Engineer on all city and county projects.
- The State Roadway Data Office, MS 47380.
- Any other distribution that the Region deems appropriate.

Actions the Project Engineer should consider taking once Physical Completion has occurred include:

- Initiate a discussion of contract time.
- Identify any unresolved disputes and initiate discussions.
- Initiate a full review of item quantities, seeking contractor concurrence.
- Initiate a final review of materials documentation.
- On Federal-aid projects, initiate a Stewardship Final Inspection and Acceptance.
- Compile a list of all approved subcontractors performing work on the project and transmit to Contractor, who will review the list for completeness and return the list annotated with each subcontractor Universal Business Identifier (UBI).

1-2.5G Liquidated Damages

Liquidated Damages must be resolved before the final estimate can be completed and processed. Guidance for assessing Liquidated Damages can be found in Section 1-08 of the *Standard Specifications*, and in some cases, in the contract provisions.

Any withholding or assessment made against the Contractor's payments, is to be preceded by a fair notice written communication to the contractor. For those issues that could be remedied with actions taken or initiated by the Contractor, this notice should also include a reasonable period of time that will allow the contractor to take action to mitigate or completely avoid the withholding or assessment.

The term "withhold" refers to a temporary deduction shown on a progress estimate. The term "assess" refers to a permanent deduction that could be shown on a progress estimate, but will be shown on the final estimate. Liquidated damages fall into two categories — one deals with contract time and the other deals with miscellaneous provisions such as ramp or lane closures. These two categories are described below.

1-2.5G(1) Contract Time Liquidated Damages

Section 1-08.9 of the *Standard Specifications* (and, at times, the contract provisions) establishes the amount of Liquidated Damages to be assessed the Contractor for overruns in contract time. These assessments are either: (1) the formula calculated liquidated damages, or the liquidated damages prescribed by the contract provisions; or (2) the direct engineering and related costs. All temporary withholding or final assessment of these Liquidated Damages are to be shown as a below the line "Liquidated Damages" deduction on progress estimates and the final estimate.

The State Construction Engineer has not subdelegated to the Region the authority to assess time related damages on progress estimates or the final estimate. However, the authority to withhold below the line "Liquidated Damages" on progress estimates has been subdelegated to the Regions, and may be further subdelegated to the Project Engineer. Liquidated Damages should be addressed whenever it is apparent that the number of working days provided in the contract will be used before Substantial Completion. It is emphasized once again that fair notice and communication is necessary as a legal requirement.

In some cases, there are legitimate reasons for time extensions which would preclude withholding liquidated damages on progress estimates. If the Project Engineer is aware of or anticipates a possible time extension that would preclude withholding liquidated damages on progress estimates, the Region and/or the State Construction Office should be consulted for guidance. If the Project Engineer determines that withholding of liquidated damages on progress estimates would not be appropriate, the reasons for not withholding are to be documented by a memorandum to the files. The following describes the procedures for addressing contract time related liquidated damages in the various stages or phases of the project:

- Phases (Interim Physical Completion Dates). Liquidated damages for phases will be shown in the special provisions. When the contract includes additional phases, and the time for physical completion of a phase has overrun, the overrun should be resolved as it occurs. This involves the Contractor either being granted an extension of time or being assessed liquidated damages by the State Construction Office.
- After Substantial Completion Date of the Contract. If substantial completion is granted after the expiration of contract time the formula for liquidated damages in Section 1-08.9 of the *Standard Specifications* will be assessed for that period of time between the expiration of contract time and the substantial completion date. Liquidated damages assessed after the date of substantial completion will be only those costs

identified as Direct Engineering and related costs that have been incurred by WSDOT. The direct engineering and related costs are defined as field engineering and inspection time charges plus any vehicle, travel pay, per diem, or other charges connected with the delayed contract physical completion. Engineering costs such as computing grades, quantities, etc. which would have been incurred by WSDOT under normal conditions should not be included in the determination of direct engineering and related costs. If substantial completion is granted on or prior to the expiration of contract time, direct engineering costs will only be assessed for that period of time between the date contract time expired and the physical completion date.

- Before Physical Completion. If Substantial Completion has not been established, the formula for Liquidated Damages in accordance with Section 1-08.9 of the *Standard Specifications*, will be assessed for that period of time between the expiration of contract time and the Physical Completion date.

Working days added to the contract by time extensions when time has overrun shall only apply to the days on which Liquidated Damages or Direct Engineering have been charged, such as:

- If Substantial Completion has been granted prior to all of the authorized working days being used, then the number of days in the time extension will eliminate an equal number of days on which Direct Engineering charges have accrued.
- If the Substantial completion date is established after all of the authorized working days have been used, then the number of days in the time extension will eliminate an equal number of days on which Liquidated Damages or Direct Engineering charges have accrued.

1-2.5G(2) *Miscellaneous Liquidated Damages*

The contract provisions may provide for assessment of other liquidated damages, such as failure to open traffic lanes within the prescribed time or failure to open ramps within the prescribed time. Any temporary withholding or final assessment of these liquidated damages shall be shown as a below the line "miscellaneous" deduction on progress estimates and the final estimates. The State Construction Office has subdelegated the authority to the Regions to withhold and assess these types of liquidated damages on progress estimates and the final estimate. The Project Engineer shall notify the Contractor in writing when these types of liquidated damages are to be assessed.

1-2.5H *Completion Date*

Immediately after the Physical Completion date has been established, the Project Engineer is to notify the Contractor of all outstanding documents that are required in order to establish a project Completion Date. Once all the obligations of the contract have been performed by the Contractor, the Project Engineer will provide the Contractor written notice of project completion, identifying the Completion Date established for the contract.

In order for the project Completion Date to be established, all the physical work on the project must be completed, and the Contractor must have furnished all documentation required by the contract, contract provisions, and the *Standard Specifications*. This includes the signed Final Contract Voucher Certification. (Note: Establish the Completion Date as soon as the last item of paper work is received. The final estimate does not have to be processed in order to establish the Completion Date.) the notice to the Contractor should be prepared and mailed on the same day that is designated as the completion date. A copy of the completion letter must be e-mailed to: caps@wsdot.wa.gov, or faxed to the contract payments section of the WSDOT Accountability and Financial Services Office, (fax number (360)705-6804) on the day the letter is written.

If the Contractor refuses, or is unable to return, a signed FCVC or any of the required documents, the Project Engineer, the Region and the State Construction Office can work together to move the project towards closure by establishing a unilateral completion date allowing WSDOT Acceptance of the contract. See Chapter 1-3.1D for Unilateral Acceptance procedures.

1-2.6 *Enforcement of Wage Rate Requirements*

1-2.6A *General Instructions*

The payment of predetermined minimum wages on Federal-aid contracts is derived from the Davis-Bacon Act of 1931 and is prescribed by 23 U.S.C. 113. The payment of predetermined minimum wages on State funded contracts is partly modeled after the federal Davis-Bacon Act and was enacted into law in 1945 under the Washington State Prevailing Wages on Public Works Act, RCW 39.12. Both Acts are intended to protect the employees of contractors who are performing public works construction from substandard earnings and to preserve local wage standards.

The guidance provided herein is intended to help those project offices administering construction contracts understand the laws, regulations and contractual obligations regarding prevailed wages. It is not meant to be a substitute for reading and understanding federal and state laws and it is not intended to be legal advice. If a labor issue arises and cannot be resolved at the project office level, it will be elevated to the Region Construction office and if necessary, the State Construction Office.

1-2.6B *Monitoring of State Requirements*

The requirements for the Contractor's compliance with State prevailing wages are noted in Section 1-07.9 of the *Standard Specifications*. Specific wage rate determinations for State prevailing wages are noted in the contract itself. Though certified payrolls can be requested regardless of the contract's source of funds, these are a specific requirement for enforcement of federal wage laws only and are not routinely used for monitoring of State prevailing wage issues.

Requirements for State prevailing wages include:

- Section 1-07.9 requires that the Contractor submit a *Statement of Intent to Pay Prevailing Wages* (SI) prepared on the State L&I form and approved by that

agency. Statements are required for the Contractor and for each subcontractor, agent and lower-tier subcontractor. The specification requires that no progress payments be released to the Contractor for work completed by the Contractor, or for portions of work completed by subcontractors, agents or lower-tier subcontractors prior to the Project Engineer's receipt of the approved statement for the entity performing the work. State L&I will approve the statements and further certify that the documents meet the requirements of State laws.

- After the project has been accepted by WSDOT, the Contractor, all subcontractors, and all lower-tier subcontractors must submit an *Affidavit of Wages Paid* (AWP) prepared on the State L&I form and approved by that agency. (The form may be submitted earlier by a subcontractor or lower-tier subcontractor should that firm's work be completed prior to acceptance.) It is the Contractor's responsibility to obtain and provide all AWP to the Project Engineer for all subcontractor and lower-tier subcontractors performing work on the project. In the event a subcontractor or lower-tier subcontractor cannot or will not provide a completed AWP form, the Contractor should consult or seek guidance from State L&I. Failure to provide all required AWP for all contractors who worked on the project will result in continued withholding of the prime Contractor's retained percentage.
- A contractor or subcontractor may enter into an agreement with his or her employees to work 10 hours per day without having to pay overtime. This is provided that no employee work more than 4 calendar days a week.
- State L&I has also defined "Contractor" to include some fabricators or manufacturers who produce nonstandard items specifically for use on the public works project. Additionally some companies who may contract with the Contractor, subcontractors, or lower-tier subcontractors for the production and/or delivery of gravel, concrete, asphalt, or similar materials may perform activities that cause employees of these firms to be covered by state prevailing wage laws.

Specific circumstances that may cause employees of these firms to be covered by State prevailing wage laws are described in State L&I publications. These publications are included in the provisions of each contract adjacent to the State Prevailing Wage listings. Where these firms are covered by State prevailing wage laws, an approved *Statement of Intent to Pay Prevailing Wages* and *Affidavit of Wages Paid* must be submitted to the Project Engineer on State L&I forms.

The Project Engineer should monitor the Contractor's efforts in regards to state prevailing wages by:

- Monitoring to ensure an approved Statement of Intent is received prior to releasing any progress payments for work completed by the Contractor, subcontractor or lower-tier subcontractors as well as any fabricators or suppliers of materials whom L&I may also determine as being covered.

- Monitoring to ensure that Affidavits of Wages Paid have been received for the Contractor as well as each subcontractor or lower-tier subcontractor who performed work on the contract. In addition, AWP are also required of each fabricator or supplier who was also covered by state prevailing wages. Ensure that the company name on the Affidavit of Wages Paid matches the company name on the Statement of Intent to Pay Prevailing Wages. If this is not the case, the Affidavit is not acceptable; unless the Contractor or subcontractor can supply a copy of their business license showing both names (i.e. Company Name and Trade Name).
- Monitoring by observing concerns of employees of the Contractor, subcontractors, or lower-tier subcontractors. In particular, the Project Engineer should note any employee complaints regarding specific state prevailing wage violations by the employer.

In the event the Project Engineer identifies or receives a complaint from any employee of the Contractor regarding improper application or nonpayment of state prevailing wages, or improper application of overtime pay, the Project Engineer should immediately notify the Contractor requesting prompt corrective action. All issues of noncompliance involving either the Contractor, subcontractor, and any lower-tier subcontractors are to be addressed through the Prime Contractor for resolution.

Once the Contractor has been informed that an apparent violation of state prevailing wages has occurred, it is expected that a satisfactory correction or explanation will be made within a reasonable period of time. If this does not happen, the Project Engineer should inform the Contractor that the matter may be referred to the Washington State Department of Labor and Industries (L&I) for further action. If the failure to act continues, the Project Engineer should refer the issue to the Region Construction Manager.

Except as noted for missing Statements of Intent, routine monthly progress payments made to the Contractor for work completed should not be deferred for enforcement of state prevailing wage laws. The State Construction Office will refer the matter to State L&I for further investigation that may be appropriate. Should State L&I choose to investigate, L&I will establish the amount of any unpaid wages due employees of the contractor. In order to recover these wages for employees, L&I may choose to file a claim against the Contractor's retainage held under the contract. State L&I may also choose to recover unpaid wages by requesting that the Project Engineer withhold funds from monthly progress estimates for work completed by the Contractor.

1-2.6C Enforcement of Federal Prevailing Wage Provisions

In addition to the requirements of Section 1-07.9 of the *Standard Specifications*, all contracts financed with Federal-aid funds include the *Required Contract Provisions for Federal-aid Construction Contracts* (FHWA-1273). These provisions identify federal wage requirements. The federal prevailing wage requirements included in these provisions are also commonly referred to as Davis Bacon and Related Acts (DBRA). It is the responsibility of the Project Engineer to both monitor and enforce these provisions to the degree

necessary to ensure full compliance. In order to comply with these requirements, the Contractor must:

- Submit weekly certified payrolls to the Project Engineer for themselves, each subcontractor, and each agent or lower-tier subcontractor. These consist of copies of weekly payrolls along with a signed Statement of Compliance.
- Post wage rate posters.
- Post the wage determinations of the United States Secretary of Labor. These determinations consist of the listing of Federal Wages that are included in the provisions of each contract.
- Allow interviews of employees during working hours by authorized representatives of WSDOT, the Federal Highway Administration, and the U.S. Department of Labor.

The prime Contractor is ultimately responsible for all subcontractor, agent, or lower-tier subcontractor compliance with the requirements for federal prevailing wages.

1-2.6C(1) Federal Prevailing Wage Rates

The Contractor must post the federal wage determination, consisting of the wage listing included in the contract provisions, in a prominent place where it can easily be seen by workers. Standard posters (forms FHWA 1495 and FHWA 1495A) are also to be posted and are available to the Region from the Support Services Supervisor, FHWA, Olympia, Washington. Form FHWA 1495A is printed in Spanish and is to be posted when the project is in an area where there is a possibility that some workers may speak only Spanish.

1-2.6C(1A) OWNER-OPERATORS OF TRUCKS AND OTHER HAULING EQUIPMENT

The FHWA neither defines the term “owner-operator” nor uses it in regulation. The FHWA regulates “employers” and “drivers.” An owner-operator may act as both an employer and a driver at certain times or as a driver for another employer at other times depending on contractual arrangements and operational structure (Federal Register/ Vol. 62, No. 65 / Friday, April 4, 1997 / Rules and Regulations).

Bona fide owner-operators of trucks and similar construction hauling equipment, who are **independent contractors**, are not subject to enforcement of contract labor standard provisions of the Davis Bacon Act and/or RCW 39.12. Owner-operators of other non-hauling type equipment (dozers, scrapers, backhoes, etc.) are considered a sub-contractor, a lower tier subcontractor or an employee of the Prime Contractor or of a sub-contractor. If they are an employee of the Prime Contractor or a sub-contractor, they must appear on that contractor’s payroll as an employee, not as an “owner-operator.”

A ruling by the U.S. Department of Labor (DOL) states in effect that:

Because owner-operators usually work under payment arrangements based on a unit price [e.g., so much per cubic yard hauled] rather than on an actual truck or equipment rental rate plus the driver's (or operator's) rate, and,

because of difficulties that have arisen with respect to securing adequate data on rental arrangements in order to determine whether contract minimum rates are being paid, therefore,

as a matter of administrative policy, the provisions of Davis-Bacon and related acts will not be applied to bona fide owner-operators of trucks or other similar construction equipment used exclusively for hauling and who are **independent contractors**.

"Certified Payrolls" for owner-operators shall be in accordance with the Required Contract Provisions for Federal-aid Construction Contracts (FHWA-1273) and shall include the names of such bona fide owner-operators. The certified payroll need not show hours worked nor rates allegedly paid, but only operator's name and the notation "owner-operator." In this way, such individuals may be recognized as bona fide **independent contractors**, who are NOT subject to contract labor standard provisions and can be distinguished from equipment operators, who ARE subject to such provisions. This position does not apply to owner-operators of other equipment such as bulldozers, backhoes, cranes, welding machines, etc.

A ruling by the Chief Counsel for the Federal Highway Administration requires that data for each driver employee of truck owner-operators, regardless of number of trucks owned, must be shown the same as for any other laborer or mechanic. This means all such employees shall be listed on the payroll with a complete breakdown of hours worked, hourly rate paid, and all other required information according to the FHWA-1273. During a multi-shift operation when an owner may hire a driver for a subsequent shift, a complete breakdown of information relative to daily hours worked, hourly rate paid, etc., must be shown on the payroll for "employee of owner-operator." This same procedure shall be followed if owners have several trucks for which they hire drivers. The only exception to showing a complete breakdown of information is when "owner operators" physically drive their own trucks.

Though owner-operators who drive their own trucks may not be subject to prevailed wages as defined in the Davis Bacon Act and RCW 39.12, they are required under State statute to submit *Statement of Intent to Pay Prevailed Wages* and *Affidavit of Wages Paid*. There is no exception to this requirement.

References, but not limited to:

Required Contract Provisions FHWA 1273

RCW 39.04.

RCW 39.12.

U.S. DEPARTMENT OF LABOR DAVIS-BACON
RESOURCE BOOK 11/2002

DAVIS-BACON MANUAL ON LABOR STANDARDS
FOR FEDERAL AND FEDERALLY ASSISTED
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1-2.6C(2) Certified Payroll Inspection

The “Contract Provisions for Federal-Aid Construction Contracts” (FHWA-1273) require the Contractor, subcontractors, agents or lower-tier subcontractors to submit certified payrolls. These are to be checked by the Project Engineer to ensure the required information has been included and is correct. The Project Engineer should accomplish this by making a complete check of the first payroll submitted on the project by the Contractor, each subcontractor, and each lower-tier subcontractor. Once satisfied that these first payrolls are correctly prepared, subsequent payrolls for that project may be accepted by a random spot checking of approximately 10 percent of the payrolls submitted. If errors are found during any spot-checking of the payrolls, a more complete or thorough check should occur until the Project Engineer has determined that the errors detected have been corrected and monitoring can be returned to a spot checking basis. The *Contract Provisions for Federal-Aid Construction Contracts* (FHWA-1273) identify the required items to be included in certified payrolls. A complete payroll inspection by the Project Engineer should confirm that the following items are present:

- The contract number and contract name noted on the payroll form, together with the payroll number and payroll period. The name of the employer, identifying the Contractor, subcontractor, or lower-tier subcontractor, must be shown.
- A specific minimum wage rate is to be identified for each worker. The *Standard Specifications* require the Contractor to use word descriptions for the labor classifications that are included in the contract provisions identifying federal wage rates, and are to be used on all payrolls. Section 1-07.9 of the *Standard Specifications* permits the Contractor to use an alternative method to identify or correlate the labor descriptions used in order that they may be compared to the contract provisions.
- Each employee’s unique identification number (i.e., last four digits of the employee’s Social Security number). The payroll shall not include the full Social Security number or home address of the employee; however the contractor or subcontractor shall maintain this information on file and provide this information upon request by the Agency.
- Payroll deductions must conform to the “Anti-Kickback” Act noted in the *Required Contract Provisions for Federal-aid Construction Contracts* (FHWA-1273). If payroll deductions are questionable, contact the State Construction Office for assistance.
- Every laborer or mechanic working on the contract must be classified for the proper minimum prevailing wage in accordance with the designated wage determination. If a classification of worker is used that does not appear in the contract special provisions, Section 1 07.9 of the *Standard Specifications* makes it the Contractor’s responsibility to contact the U.S. Department of Labor for a determination of the proper wage rate. The *Required Contract Provisions for Federal-aid Construction Contracts* (FHWA-1273) provides a method for resolving this.
- All payrolls must have a statement of compliance signed and in the form prescribed by Section V of the *Required Contract Provisions Federal-aid Construction Contracts* (FHWA-1273).
- The Contractor, subcontractor, or lower-tier subcontractor, in accordance with the requirements of DBRA, must certify all payrolls. This certification contains four elements:
 - That the payroll copy furnished is a true copy;
 - That the payroll is correct and complete;
 - That the wage rates contained therein are not less than those determined by the Secretary of Labor, and that the classification set forth for each laborer or mechanic conforms with the work being performed; and
 - That the appropriate fringe benefits due each employee have been paid in full.

Subcontractors and lower-tier subcontractors are required to submit payrolls through the Prime Contractor to the Project Engineer. Any payrolls which do not comply fully with the requirements outlined above must be corrected by a supplemental payroll.

1-2.6C(3) Employee Interviews

The Project Engineer must conduct periodic employee interviews. The purpose of these spot interviews is to establish, with reasonable certainty, that the provisions for federal prevailing minimum wages are being complied with and that there is no misclassification of workers or disproportionate employment of laborers, helpers, or apprentices. The occupation description must be shown on the form used for the employee interview noted under current duties. The occupation description is noted in the wage listing included in the contract provisions.

Some employees may refuse to reveal their rate of pay. This is acceptable and should be noted in the remarks column. Many employees do not know or may guess at the rate. If possible, a determination of the accuracy of the stated rate should be made, and any uncertainty noted in the remarks column to reduce the need for follow up interviews. If either the stated rate (from the employee) or the record rate (from the certified payroll) is below the minimum rate (from the contract wage listing), an investigation by the Project Engineer must be conducted. The investigation may be as simple as a follow up interview with the employee or a more in depth investigation may result in a requirement for a supplemental payroll. In any event, the matter must be resolved so that the employee interview report describes what corrective action was taken to ensure that the employee has been paid the minimum prevailing wage rate. This corrective action is to be reported under remarks on the form or by attached memo if more space is needed. All discrepancies found must be resolved.

The frequency and extent of these interviews should be sufficient to ensure a representative sampling has been made for all classes of workers employed on the contract. A minimum sampling should include employees of the Contractor and all major (30 percent or more of the contract dollars) subcontractors. The interviews should be made with

such frequency as may be necessary to ensure compliance. Employee Interview Report, Form 424-003, is used to record and report interviews.

1-2.6C(4) Complaints

Any complaints regarding violations of minimum wage rate regulations that are referred to the Project Engineer by employees of the Contractor, subcontractor, or lower-tier subcontractors should be treated as confidential, and should be promptly investigated by the Project Engineer. If there are questions regarding complaints and the application or interpretation of the federal prevailing wage provisions, the Project Engineer should consider referring the issue to the Region Construction Manager or contacting the State Construction Office for further assistance.

1-2.6C(5) Federal Prevailing Wage Violations

In the event the Project Engineer identifies or receives a complaint from any employee of the Contractor regarding improper application or nonpayment of federal prevailing wages, improper application of overtime pay, or any other requirement noted in the *Required Contract Provisions for Federal-aid Construction Contracts* (FHWA-1273), the Project Engineer should immediately notify the Contractor requesting prompt corrective action. All issues of noncompliance involving either the Contractor, subcontractor, and any lower-tier subcontractors are to be addressed through the prime contractor for resolution.

If the Project Engineer determines the Contractor is in violation of the provision noted in the FHWA 1273 or Section 1-07.9 of the *Standard Specifications*, the Contractor should be immediately informed and requested to make the necessary corrective actions. Once the Contractor has been informed that an apparent violation has occurred, it is expected that a satisfactory correction or explanation will be made within a reasonable period of time. If this does not happen, the Project Engineer should withhold an appropriate portion of payment (see 1-3.1B(9)). If the failure to act continues, the Project Engineer should refer the issue to the Region Construction Manager.

1-2.6C(6) Department of Labor Investigation

The U.S. Department of Labor may investigate compliance with the DBRA and the Contract Work Hours and Safety Standard Act (CWHSSA) when conducting any investigations relative to compliance with the Fair Labor Standards Act or any other acts under its enforcement authority. Investigative action taken by the U.S. Department of Labor with respect to DBRA and CWHSSA do not, in any way, change the degree of authority or responsibility of WSDOT for enforcement of these Acts. Any actions taken by the U.S. Department of Labor should be considered as services we may use to assist us in our enforcement activities but, should not be considered to relieve us of our basic responsibility to investigate fully all potential violations and to apply such sanctions as are deemed applicable under our enforcement authority to ensure compliance.

1-2.6C(7) Fraud Notice Poster

Fraud Notice, FHWA 1022, Title 18 USC 1020, must be displayed on all Federal-aid projects during the course of the work. This notice points out the consequences of any impropriety on the part of any contractor or WSDOT employee working on the project.

1-2.6C(8) Request For Authorization of Additional Classification and Rate

The U.S. Department of Labor (DOL) issues wage determinations under the Davis-Bacon Act (DBA) using available statistical data on prevailing wages and benefits paid in a specific locality. On occasion, the data does not contain sufficient information to issue rates for a particular classification of worker needed in the performance of the contract. Because of this, DBA provisions contain a conformance procedure for the purpose of establishing an enforceable wage and benefit rate for the missing classification (reference *Standard Specification* 1-07.9(1) and FHWA 1273).

Contractors are responsible for determining the appropriate staffing necessary to perform the contract work. Contractors are also responsible for complying with the minimum wage and benefits requirements for each classification performing work on the contract. If a classification considered necessary by the contractor for performance of the work is not listed on the applicable wage determination, the contractor must initiate a request for approval of an additional classification along with the proposed wage and benefit rates for that classification.

The Contractor initiates the request by preparing form SF1444, Request for Authorization of Additional Classification and Rate, at the time of employment of the unlisted classification. (Reference FAR 22.406-3 and 52.222-6(b), and Title 29 CFR Part 5, Section 5.5(a)). The Contractor completes blocks 2 through 15 on the form. Standard Form 1444 is readily available via the internet and is accessible by going to www.gsa.gov/Portal/gsa/ep/formslibrary.do?formType=SF, and searching by the form number.

The Contractor submits the request to the State Construction Office via the Project Engineer's office. The Project Engineer's office will need to review the request and if applicable, provide backup data showing that the requested classification(s) have been prevailed in other counties within the state. The project office will also need to describe the work being performed and verify that the duties performed, as described in the request, are not covered by any other classification(s). This documentation, along with the request, will be forwarded under cover letter from the Project Engineer's office, through the Region Documentation office, to the State Construction Office.

The State Construction Office reviews the request for completeness and signs the form designating the contracting agency's concurrence or disagreement with the Contractor's proposal. If the Project Engineer or the State Construction Office indicates disagreement with the Contractor's proposal, a statement must be attached supporting a recommendation for different rates. The State Construction Office then submits the proposal with all attachments to DOL for

approval. The Contractor is obligated to pay the proposed wage and benefit rates during the request for determination and pending a formal response from DOL.

When a determination has been received from DOL, the Contractor is obligated to pay that determined wage and benefits. If the Contractor has underpaid the employee(s), they are required to make back payment and re-submit corrected certified payrolls.

1-2.7 EEO, D/M/WBE and Training

1-2.7A Overview

Differences between State and Federal laws require a variety of guiding requirements. As a result individual contracts may have different guiding requirements depending on what laws were in place at the time the contract was executed and how the project is funded. The special provisions, *Standard Specifications*, and amendments determine the specific requirements for each project. The *Construction Manual* is one of many resources available for general information on the obligations and policy of WSDOT with regard to external civil rights. Other resources include:

1. Office of Equal Opportunity (OEO): OEO monitors, maintains, and updates WSDOT Equal Employment Opportunity (EEO) policies and commitments to FHWA. As part of that effort they maintain the following documents which are available through the OEO homepage:
 - Equal Employment Opportunity Compliance Program (EEO and on the Job Training)
 - Disadvantaged Business Enterprise Participation Plan (contract goals, if included in a project, will be mandatory)
 - Title VI Plan (nondiscrimination)
2. *Standard Specifications*, as follows, apply to all projects:
 - 1-07.11 Requirements for Nondiscrimination
 - 1-08.1 Subcontract Completion and Return of Retainage Withheld
3. General Special Provisions as may be included in the contract include:
 - Minority and Women's Business Enterprise (MWBE) Participation (included in projects financed with only State funds)
 - Requirement for Affirmative Action to Ensure Equal Employment Opportunity (included in projects with FHWA participation)
 - Disadvantaged Business Enterprise Participation (included in projects with FHWA participation)
 - Special Training Provisions (included in projects with FHWA participation and only if the contract is selected for training)
 - Indian Preference and Tribal Ordinances (TEROs) (only if the project includes work on the reservation and only if the ordinances exist)

While some requirements and provisions apply to all projects, others apply to projects with State funds only and others yet apply to projects that are partially or fully financed with Federal funding.

1-2.7B EEO (Federally Funded Projects)

WSDOT has committed to FHWA to perform comprehensive construction compliance reviews to ensure that the requirements of Section 1-07.11 have been adhered to. This review is performed by the WSDOT Office of Equal Opportunity (OEO) on a selected number of FHWA funded projects and may take place at any point during the life of the project or after the project has been completed. A Contractor that is found in violation of the contractually required affirmative action good faith efforts will be invited to a compliance conference to develop a corrective action plan. Failure to accept and comply with a corrective action plan may result in sanctions. The records that have been maintained at the Contractor's office will be utilized for these reviews. The FHWA also retains the authority to review the Contractor's records for EEO compliance. These reviews do not normally involve the project office other than notification of their occurrence and the resulting findings.

Contract compliance reviews include an on-site review, and interviews of contractor employees, while the contractor is actively engaged in performing work associated with the contract. If interviews cannot be conducted during the site review, such interviews may be conducted off-site, at other locations, or at a later time. The WSDOT Office of Equal Opportunity (OEO) may also interview WSDOT personnel associated with the project. FHWA has established narrow time frames during the execution of the project that maximize the potential for obtaining the information required for an on-site review. OEO will contact the Region EEO Officer or project staff to facilitate the timing of the review. Federal regulations for projects having federal-aid dollars as part of their funding source require the full cooperation of any contractor who performs work on the project.

1-2.7B(1) Prompt Return of Retainage to All Subcontractors

As a condition of receiving Federal funding, WSDOT is required to ensure prompt payment to all subcontractors on all contracts regardless of funding. State Statutes (Revised Code of Washington, RCW) pertaining to prompt pay require that the contracting agency make prompt payment to the prime contractor and that the prime contractor, in turn, pass these payments on to subcontractors in a timely manner.

Return of the subcontractor's retainage held by the prime contractor is required by the *Standard Specifications*. This is a race neutral effort intended to support all small businesses in their efforts to participate in WSDOT contracts. Therefore, in accordance with the contract provisions, the prime contractor is required to release any and all retainage to the subcontractor within a designated time period after subcontract completion. The Project Engineer has no role in this process other than to respond to allegations of non-compliance with this contract requirement as with any other. We need to keep in mind that our contract is with the prime contractor, and we are not a party to the prime contractor's subcontract documents. We should avoid becoming involved in a prime's relationship with their subcontractors.

In the prime contractor's effort to determine completion of subcontract work, as required by the contract provisions, the Project Engineer may be asked to determine completion

of a portion of the work. While we need to work with the Contractor to comply with the requirements of the specification, we should also take specific care to not issue partial punch lists or to place ourselves in a position of “accepting” portions of the work. In some cases we may provide the Contractor relief under certain conditions as described in Section 1-07.13 of the *Standard Specifications*, “Contractor’s Responsibility for the Work.”

1-2.7C EEO (State Funded Projects)

The Contractor is required to comply with the EEO requirements detailed in the *Standard Specifications* Section 1-07.11, Requirements for Nondiscrimination. In general, these requirements include having an EEO Officer, developing, maintaining, making known, and utilizing an EEO program. The Project Engineer should be alert for and respond to any indications or accusations of discrimination. If the Project Engineer, or any other WSDOT personnel, becomes aware of any indications or accusations of discrimination, they should immediately notify the Region EEO Officer, who will in turn immediately notify WSDOT OEO. WSDOT OEO will handle any investigation that is warranted. The Office of Equal Opportunity and your regional OEO staff are available for guidance and assistance in these types of situations.

1-2.7D EEO (Federally Assisted Projects)

The requirements for EEO and nondiscrimination for federally assisted contracts are similar to those required for State funded projects. However, additional monitoring, reporting, and authority are mandated by Federal laws as noted in the Federal contract requirements known as the “FHWA 1273.” The “FHWA 1273” is included in every Federally assisted contract. These requirements are reiterated in the *Standard Specifications* Section 1-07.11, Requirements for Nondiscrimination.

Reporting

- Federal-Aid Highway Construction Contractors Annual EEO Report, Form FHWA - 1391 — This form is required for all Federally assisted projects provided the prime contract is equal to or greater than \$10,000 and for every associated subcontract equal to or greater than \$10,000. Each contract requires separate reports be filed for the prime contractor and each subcontractor (subject to the above noted criteria.) These forms are to be submitted to the Project Engineer, and are due by August 25th each year in which work was performed in the month of July.

The payroll period to be reflected in the report is the last payroll period in July in which work was performed. A contractor who works on more than one Federally assisted contract in July is required to file a separate report for each of those contracts. For multi year projects, a report is required to be submitted each year work was performed during the month of July throughout the duration of the contract. A responsible official of the company must sign the completed report.

Upon receipt, the Project Engineer will forward the annual report to the Region’s EEO Officer by September 5th. The Region EEO staff at the direction of the OEO will compile and report the information noted on the forms. The figures reported must reflect the number of employees, not hours, in each category, with subtotals broken out for women and minorities and grand totals for the category. Tables A through E reflect both apprentices and on the job trainees that were also utilized within each trade. The form must also include the corresponding subtotals in each category, A through E, broken out by both women and ethnicity.

- Summary of Employment Data Report, Form FHWA - 1392 — As a part of the WSDOT OEO Equal Employment Opportunity Contractor Compliance Program, WSDOT is required to submit a summary of employment data to FHWA for each Federal fiscal year. This Summary of Employment Data Report, FHWA-1392, is prepared from forms FHWA-1391 (project specific annual reports) that have been submitted to the Region by the Project Engineer’s offices. This summary is prepared by the Region EEO lead or other Region designee for each Federally assisted project. This report also includes Local Agency projects administered through the Region’s Highways and Local Programs offices. The completed FHWA-1392 summary reports, including all forms FHWA-1391, are then submitted by the Region EEO lead to the WSDOT Office of Equal Opportunity by September 15th each year.
- Monthly Employment Utilization Reports, WSDOT Form - 820-010 — This form, or approved substitute, is required for all federally assisted projects if the prime contract is equal to or greater than \$10,000 and for every associated subcontract equal to or greater than \$10,000. This report includes the total work hours for each employee classification as well as the total number of employees, broken out by ethnicity, in each trade, for each WSDOT project. Instructions for completing the form can be found on the back of the form itself. These monthly reports are to be maintained by the Contractor in the respective prime or subcontractor’s records for a period of three years from acceptance of the contract, and available to WSDOT and/or Federal reviewers upon request.

The information required by WSDOT Form 820-010 may be accepted in an alternate format provided that format contains all of the data required by and is completed in accordance with the instructions for WSDOT Form 820-010. The Region EEO staff should be consulted regarding the acceptability of any alternate format proposed by the Contractor.

Records Retention and Reviews

The Contractor is required to maintain all project records, including the aforementioned EEO records, for three years following completion of the contract.

1-2.7E Minority and Women Owned Business Enterprise (MBE, WBE)

MBE, WBE is the designation for holding State certification as a minority or women owned business enterprise. The State Office of Minority and Women's Owned Business Enterprises (OMWBE) certifies businesses as either a minority owned business (MBE), a women owned business (WBE), or a combination of both (M/WBE). On projects funded in whole or in part with State funds, the contract provisions will include a MBE, WBE special provision. This provision requires that the Prime Contractor submit an M/WBE Participation Plan and may specify voluntary goals for the Contractor's utilization of M/WBE. The provision also includes suggested methods for encouraging M/WBE participation. As noted, these requirements are indeed voluntary and there are neither preferences for accomplishment nor sanctions for noncompliance. When the Project Engineer's Office receives the Prime Contractor's M/WBE Participation Plan, it should be transmitted to the WSDOT Office of Equal Opportunity for review and comment.

MBE/WBE Reporting

- Quarterly Report of Amounts Paid MBE/WBE Participants (Form 421-023). In accordance with Section 1-08.1 of the *Standard Specifications*, a Quarterly Report of Amounts Paid MBE/WBE Participants (Form 421-023) is required from the prime contractor for all projects funded entirely by State funds. When a project contains Federal assistance, the Federal quarterly reporting requirements for DBE utilization override the States requirements, eliminating the need for the State's MBE/WBE report of amounts paid. The Quarterly Report of Amounts Paid MBE/WBE Participants reflects the State fiscal quarters. Quarterly reports are to be submitted to the Contracting Agency within 20 calendar days of the end of each quarter and within 20 calendar days of physical completion of the contract. The dollar amounts shown in each report are those amounts paid to the MBE/WBE firms during the respective quarter. The final report is to show only the dollar amounts paid during the remaining partial quarter ending on the Physical Completion date. The Region is responsible for entering this data into CCIS. The Region Documentation/Equal Employment Opportunity (EEO) Officer needs to verify the information has been entered and validate the information. The completed form is maintained as a part of the project records and becomes a part of the temporary final records upon completion.

1-2.7F Disadvantaged Business Enterprise (DBE)

DBE is the designation for holding Federal certification as a Disadvantaged Business Enterprise. On Federally funded projects there will normally be a DBE requirement of some sort specified by the contract special provisions. This special provision will be one of two types:

1-2.7F(1) GSP Includes No Goal

When *No Goal* is specified, the contractor is encouraged to take actions that promote DBE participation. The goal is intended to draw the attention of bidders to the opportunity to subcontract with DBE's. However, these requirements are indeed voluntary and there are neither preferences for accomplishment nor sanctions for non-compliance. They do contribute to the overall goal established by the Department. It is therefore important that the Department capture the work that is being performed. This can be done through "Quarterly Report of Amounts Credited as DBE Participation".

1-2.7F(2) GSP Includes Condition of Award (COA) Goal

When a *Condition of Award Goal* (COA) is specified, the Contractor is required to employ DBE participation to at least the extent identified in the contract special provisions. This is a condition of awarding the contract to the Contractor and a project can not be considered successful unless the Contractor meets the COA DBE participation goal, or the Contractor demonstrates that a good faith effort was made to deliver on the Condition of Award. These specifications are placed in contracts as a condition of continued Federal Funding for the Department.

- As a *Condition of Award*, the Contractor must commit to, and follow through on, subcontracting at least the work and the amount identified by the COA to certified DBE firms or make a good faith effort to do so.
- Measurement of attainment is not simply the payments made to the DBE. Attainment is measured in accordance with the provisions of the "DBE Participation" section of the contract special provisions.
- Changes to the amounts specified for COA must be made in accordance with the procedures outlined in this section.

1-2.7F(3) Additional Execution Documents

Successful bidders will be required to provide a "Bidders List" to the Department. This list is to include the names and addresses of every firm that submitted a bid or quotation to the Prime, whether or not that bid was used as part of the overall proposal. The Contractor is directed to send this list directly to the WSDOT Office of Equal Opportunity in Olympia and normally the Project Engineer will have no involvement.

1-2.7F(4) DBE Reporting

The contract special provisions require the Contractor to submit to the Project Engineer a "Quarterly Report of Amounts Credited as DBE Participation" for each quarter and upon completion of the project. Again, the measurement is not simply the payments made to the DBEs, rather it is in accordance with the "DBE Participation" section of the contract special provisions. This report should contain all DBEs utilized on the contract not just the COA DBEs. The information is used to track the Departments attainment of our overall goal and it is important to insure that they are received and processed in a timely manner. The Region Documentation/EEO Officers shall track and

verify that the reports are being received and entered for all applicable contracts. The Region Documentation/EEO Officers shall also compare the reports with the Condition of Award requirements.

1-2.7F(5) On Site Reviews

On-site reviews shall be conducted on all Federal-aid contracts where there is DBE participation (with or without Condition of Award (COA) goals). On-site reviews shall be conducted at periodic intervals – when the DBE begins work, during the peak period of the DBE’s work, and any time there is a change in the nature or methods of the DBE’s work. An on-site review must also be conducted when there is a change in the DBE performing the work (substitution of a DBE firm). An on-site review is a “snapshot in time” and should record personal observations, documentation reviews and personnel interviews, as applicable. A copy of the completed on-site review (WSDOT Form 272-051 EF) should be forwarded to WSDOT’s Office of Equal Opportunity (OEO).

One of the requirements of the overall DBE Program is that all DBE firms working on Federal-aid project are in control of their specific items of work and are performing a “Commercially Useful Function” (CUF), as described by the specification. An on-site review may lead to a more in-depth CUF review, conducted by the OEO. These in-depth CUF reviews may be a result of concerns identified during the initial on-site review, or the OEO may select DBE firms on a periodic basis for a more in-depth review. The OEO uses these in-depth reviews to stay abreast of the DBE firm’s capabilities. The OEO will contact the Project Office directly to schedule these reviews. The fact that the OEO is going to conduct a review shall be kept in confidence in order to ensure that the review truly reflects a sampling of the typical work of the DBE firm. The CUF review will include observations of the work, as well as interviews with key staff of all parties on the contract, in addition to the DBE firm.

On those projects containing a COA goal, the COA letter requires that the identified DBE firms perform specific items of work for the estimated dollar amounts included in the proposal. The COA letter also identifies whether the DBE firm will be performing as a “subcontractor”, “manufacturer”, or “regular dealer (supplier)”. Any issues regarding DBE compliance should be brought to the attention of the OEO and the State Construction Office.

In order for WSDOT to take credit for DBE participation (as reflected by the quarterly reports), WSDOT must ensure that all DBE firms perform a “Commercially Useful Function”. Determination of whether or not a firm is performing a “Commercially Useful Function” requires on-site monitoring. The Project Office plays a key role in this monitoring by acting as the Departments “eyes and ears” in the field.

1-2.7F(6) Changes to the Condition of Award (COA)

The Contractor is required to utilize the COA subcontractors, manufacturers, etc., to perform the work as listed in the COA letter. Substitution of another DBE is allowed if:

- A COA DBE firm becomes decertified, or
- The Contractor proposes a change to the contract, that is subsequently approved by WSDOT, which reduces DBE COA participation, or
- The prime contractor provides documentation that a DBE firm is unwilling or unable to perform the work.

Exceptions to the substitution requirement may be allowed under any of the following circumstances:

- WSDOT deletes the COA firm’s intended work.
- The COA work accomplished under runs the original planed quantity.
- The Contractor can show substantial financial loss if a substitution is required.
- The work has progressed to the point where no other work remains to be subcontracted.
- The DBE subcontractor has taken the positive step of graduating from the DBE program.

The State Construction Office must approve any substitution with concurrence from the Office of Equal Opportunity.

1-2.7F(7) Substitution

Substitutions must meet the following requirements:

- The new firm must do an equal dollar value of work on the contract.
- The change order does not increase the dollar amount of the original goal.

1-2.7F(8) Condition of Award (COA) Change Orders

Changes to the contract COA amounts must be made through a change order executed by the Headquarters Construction Office. Approval is granted after consultation with the Office of Equal Opportunity. This approval shall be obtained and documented prior to the changed work, and any related work, being performed. The amounts shown in the COA change order should be limited to the credit necessary to accomplish the original contract goal amount. The request for approval and the change order as well as the change order package needs to contain the following information:

- An explanation of why the change is necessary.
- Identification of both the deleted work and the added work.
- Revised subtotals for all COA DBE firms. The change order only needs to address each affected DBE firm, not all COA DBE firms.
- Revised total attainment for DBE participation.
- Documentation of a good faith effort to substitute should go in the change order file, (if required, see 1-2.7F(6)).

1-2.7F(9) Consulting with the Office of Equal Opportunity

The Department's DBE program is managed by the External Civil Rights Branch of the Office of Equal Opportunity (OEO) at Headquarters. The Project Engineer must communicate extensively and continuously with that office about any aspect of the DBE activities on the project. Any questions received from the Contractor or subcontractor about DBE provisions or enforcement should be answered only with full knowledge of the opinions and directions of the OEO. The OEO phone number at Headquarters is 360-705-7085.

The Office of Equal Opportunity is also required to approve DBE firms that are manufacturers and regular dealers (suppliers).

The State Construction Office must execute any change orders that revise the COA commitment. When preparing the change order in CCIS pending CO's menu use option 3, "Condition of Award Items." Include the first three items listed above in the change order document. When submitting the change order to the Contractor for signature, the Project Engineer should also send copies to the affected DBE firms and should advise the Contractor that this has been done.

1-2.7G On-the-Job Training (OJT)

1-2.7G(1) On-the-Job Training Special Provisions — General

The requirements for training are made a part of the contract by the special provision, Special Training Provisions. The amount of training is set by the WSDOT Office of Equal Opportunity based on the opportunities presented by the work and the needs in the geographical area involved. The requirements for trainee, training plan approval, and trainee payment are all specified in the contract special provisions.

1-2.7G(2) OJT Required Reports

The contract provisions allow the Contractor to accomplish training as part of their work activities, or through the activities of their subcontractors or lower-tier subcontractors. However the prime contractor is designated as being solely responsible for the completion of the training requirements as they are outlined in the contract provisions.

- Form DOT 272-049 Training Program — A training program is to be completed by the Contractor. The program must be submitted to the Engineer for approval prior to commencing contract work. The Project Engineer's office may approve Office of Apprenticeship, Training, Employer and Labor Services (OATELS) or Washington the State Apprentice and Training Council (WSATC) programs provided they meet the requirements specified in the contract provisions. The Region will review any non-OATELS/WATC training plans submitted under section III of the form for compliance. If the plan appears to be in compliance, the Region will sign it, check "Approval Recommended", and submit it to the WSDOT Office of Equal Opportunity (OEO) for concurrence. If concurrence is granted, OEO will note this on the plan and will submit the plan to FHWA for approval.

- Form 272-050 Apprentice/Trainee Approval Request — Approval of an individual trainee cannot be authorized until an approved Training Program is filed with the Region. This form is to be submitted by the Contractor for each trainee to be trained on the project. When an OATELS/WSATC apprentice/trainee is first enrolled, a copy of the apprentice/trainee's certificate showing apprenticeship/training registration must accompany the Trainee Approval Request. Trainees are approved by the Project Engineer's office based on the criteria in the special provisions. If the contractor submits a request for approval of trainee who is neither female, nor a minority, the region must obtain concurrence from the WSDOT Region EEO Officer or the WSDOT Office of Equal Opportunity prior to approval of the requested trainee.
- Form 226-012 EF Trainee Interview Questionnaire — One trainee interview is to be conducted for each craft designated on an approved training program for contracts which have 600 or more training hours or on projects otherwise designated by the Region EEO. The Region EEO shall designate additional contracts on which trainee interviews are to be completed in conjunction with those that meet the criteria above to insure that trainee interviews are conducted on at least one fourth of all the contracts that have training hours established for any given construction season. The intent of these training interviews is to document that the trainees are working and receiving proper training consistent with their approved programs. DOT form 226-012EF should be used to document these spot checks.
- Form DOT 272-060 Federal-aid Highway Construction Annual Training Report — This report is to be completed annually by the Project Engineer summarizing the training accomplished by the individual trainees during the reporting period beginning January 1 and ending December 31 of the calendar year. This report is due at the Regional EEO Office by December 20th of the same calendar year as the reporting period. The "gap" between the reporting deadline (December 20) and the end of the reporting period (December 31) is not significant enough to adversely affect the data, and should not be a source of concern for the project staff.

1-2.7G(3) Payment for "Training"

At progress estimate cutoff time, the Contractor shall submit a certified invoice requesting payment for training. The invoice must provide the following information for each trainee:

- The related weekly payroll number
- Name of trainee
- Total hours trained under the program
- Previously paid hours under the contract
- Hours due for current estimate
- Dollar amount due for current updated estimate

Retroactive payment may be allowed provided:

- The Training Program is approved
 - There are no outstanding issues or circumstances that would have prevented approval of the apprentice/trainee
- Increases in training hours are allowable and may be approved on a case by case basis by the Project Engineer in consultation with the Regional EEO Officer.

1-2.7H Apprentice Participation

1-2.7H(1) Apprentice Participation Special Provision – General

The requirements for apprentice utilization are made a part of the contract by the special provision “*Apprentice Utilization*”. The use of this provision, and the percentage of required apprentice participation, will be determined by meeting the date and dollar thresholds as follows:

- 10% On contracts advertised on or after July 1, 2007 but before July 1, 2008 and estimated to cost five million dollars or greater.
- 12% On contracts advertised on or after July 1, 2008 but before July 1, 2009 and estimated to cost three million dollars or greater.
- 15% On contracts advertised on or after July 1, 2009 and estimated to cost two million dollars or greater.

Only apprentices enrolled in an apprenticeship program approved by the Washington State Apprenticeship Council may be counted toward attainment of the apprentice utilization requirement. The Contractor may attain the apprentice utilization requirement as part of their work activities, or through the work activities of subcontractors or lower-tier subcontractors. Attainment of the requirement will be calculated by comparing the total labor hours worked by all the enrolled apprentices performing work for the Contractor and any subcontractors, in all trades, with the total labor hours performed on the project, in all trades.

It is important to note that the Apprentice Utilization Requirement is a separate program from the Federal Training requirements included in all contracts which contain federal monies. The two programs are not mutually exclusive. The intent of the federal program is to increase the availability of women and minorities within the construction trades; whereas as the Apprentice Utilization Requirement (state program) is promoting the use of apprentices in general. A female or minority apprentice enrolled in a program approved by the Washington State Apprenticeship Council meets both requirements.

1-2.7H(2) Apprentice Utilization Plan

The Contractor is required to submit an apprentice utilization plan, on WSDOT Form No. 422-115 EF, to the Project Engineer within 30 days of execution of the contract. This plan is not submitted for approval; but to inform the Project Engineer as to how the Contractor will attain the utilization requirement. The intent of the plan is to provide the Project Engineer with enough information to track the Contractor's progress in the utilization requirements. If the plan indicates that the Contractor will not attain the requirement, a revised plan should be requested and/or the Contractor should be notified that “Good Faith” documentation will be required, by the physical completion date as specified.

1-2.7H(3) Reporting

For each contract with an apprentice utilization requirement, the Contractor is required to submit a monthly ***Statement of Apprentice/Journey Participation*** (WSDOT Form No. 422-110 EF) to the Project Engineer or to enter the information into the Apprenticeship/Journeyman Online Tracking System, which is preferred to the form. This report shall be a consolidated report, and include data from the Contractor's work activities, as well as from the work activities of all subcontractors. This report will include the total hours and number of apprentices and journeymen working on the contract during the reporting period. The report will list the apprentices by name, registration number, and craft or trade; as well as the name of the Contractor or subcontractor for whom the apprentice is working. The Project Engineer should verify that the report is reasonable and is a complete account of all workers receiving an hourly wage who are directly employed on the project site for both the Contractor and all subcontractors. The hours reported do not need to be checked against payrolls. Instead the Project Engineer should review the report to determine if the number of workers, the contractors listed, and the occupations reported are a fair representation of the work that was performed. The reports do not need to include hours performed by foremen, superintendents, owners, and workers who are not subject to prevailing wage requirements. The reports should not include off-site workers involved in fabrication or plant operations. Hours for truck drivers should be included only if the driver spends the majority of their shift – four hours or more – at the project site. Do not confuse apprenticeship reporting with Federal Wage Administration or the Special Training Provisions. The reporting period starts on the first day of the month and runs through the last day of the month, and will be reported on the last working day of the following month. During periods of no work, the Project Engineer may suspend the reporting requirement. Notification of this suspension may be accomplished through the Suspension of Work letter to the Contractor. The Project Office should use the monthly reports and the apprentice utilization plan to measure the Contractor's progress toward attainment of the utilization requirement. If apprentices are not being reported on the project when the plan shows that they should be working, the Project Engineer should contact the Contractor and request a revised plan. If it appears that the Contractor may no longer be able to meet the apprenticeship requirement the Project Engineer should notify the Contractor that “Good Faith” documentation will be required by the date of physical completion, as specified. The Project Engineer should forward copies of all apprentice utilization plans to the State Construction Office through the Region. The original apprentice utilization plan should be kept in the project file. A copy of each monthly report should also be submitted to the State Construction Office through the Region as the reports are received. If the Contractor is reporting electronically, the Project Engineer is responsible for reviewing and submitting the report in the Filemaker database. Reports should be revised and resubmitted if it is determined that they are incomplete.

1-2.7H(4) “Good Faith” Procedures

“Good Faith” is the action taken by the Contractor to meet the Apprentice Utilization requirement. Documentation of the Contractor’s “Good Faith” efforts is only required if the Contractor fails to attain the requirement. “Good Faith” documentation may arrive with the monthly report or at the completion of the contract. The need to provide “Good Faith” documentation should be stressed prior to physical completion if it is determined that the monthly reports show a level of attainment that significantly differs from that in the Apprentice Utilization Plan. If this should occur, the Project Engineer should request a revised Apprentice Utilization Plan and/or “Good Faith” documentation from the Contractor. “Good Faith” documentation should demonstrate that the Contractor took the following steps:

1. Solicit Apprentice(s) from State-approved Apprenticeship Training Program(s).
2. Document the solicitation and, in the event that Apprentice(s) are not available, obtain supporting documentation from the solicited program(s).
3. Demonstrate that the plan was updated as required elsewhere in this section.
4. Provide documentation demonstrating what efforts the Contractor has taken to require subcontractors to solicit and employ Apprentice(s).

The Contractor may also provide supplemental narrative about other factors that prevented them from meeting the apprenticeship requirement, past apprentice utilization and company-wide efforts. The narrative does not substitute for the above listed items, but is addition to them. In unusual circumstances, it is possible that the Contractor would not be able to meet the apprenticeship requirement for a reason that does not fall into the above “Good Faith” process. Some examples of other circumstances that may prevent the Contractor from meeting the apprenticeship requirement are listed below, and should be documented in the “Good Faith” submittal.

- A large amount of rock-scaling or other work specified in the contract where the use of experienced worker is part of the contract requirements.
- A large amount of work in occupations that are not apprentice-able or have few apprentice opportunities, such as flagging.
- Conflicting TERO requirements.
- Competing Federal requirements.
- The use of specialty equipment that no apprentices were able to operate.
- Added or deleted work that significantly altered a Contractor’s workforce and apprentice utilization plan.
- Small crew sizes and the ration of apprentices to journeymen allowed by the apprentice program did not allow a Contractor to meet the requirement.

Any “Good Faith” documentation should be reviewed by the Project Engineer, who will determine if the Contractor met the requirement through “Good Faith”. Their determination and a copy of the “Good Faith” documentation should be submitted to the State Construction Office

through the Region. If the Contractor fails to meet the apprenticeship requirement and does not submit a “Good Faith” effort, the Project Engineer shall reflect this in the Contractor’s Performance Evaluation. Failure to comply with the apprentice utilization requirement may result in reduction or revocation of prequalification as allowed by WAC 468-16-190.

1-2.7I American Recovery and Reinvestment Act (ARRA) Projects

Projects that are funded in whole or in part by the American Recovery and Reinvestment Act (ARRA) are subject to the same requirements that apply to other federally funded projects. ARRA funded projects also have specified employment reporting requirements that are in addition to the reporting required on all Federal Aid projects.

ARRA Employment Reports shall be submitted by the Contractor to the Project Engineer on Form FHWA 1589. The report shall be completed according to the specifications and coding instructions provided with the report form, and shall contain project specific information as to the numbers, hours worked, and wages paid by the Contractor and all subcontractors for all of their employees. This report shall include all those employees of the Prime Contractor and of all subcontractors working on the ARRA project at the jobsite, in the project office, in the home office, or teleworking from home or an alternative office; and all engineering personnel, inspectors, sampling and testing technicians, and lab technicians who are actively performing work directly in support of the ARRA project.

Within 30-days of execution of the contract, the Contractor shall submit to the Project Engineer an initial report for each ARRA project awarded to the Contractor. Each month thereafter, the Contractor shall submit a monthly report for each ARRA project, submitted no later than the 10th day of each month, reporting employment information for the previous month. In those cases where there is no active work on the project for a specific month, the report will be submitted with “zeros” reported for number of employees, hours and wages.

Do not confuse Employment Reporting with Federal Wage Administration, as they are not the same. WSDOT is not provided with data that would allow for verification, nor is WSDOT required to verify employment data. Because certified payrolls are not required to include the salaried employees, owner-operators, or professional services that are required to be included in the employment report, there is no way to verify the employment data through comparison with certified payrolls. Because employment reports are required to include contractors’ home-office and telework employees, there is no way to verify employment data through field observations. Accordingly, ARRA Employment Reports should be checked only to verify that they are reasonably complete (all subs observed to be active on the project are reported).

Failure on the part of the Contractor to submit these reports by the due date may result in the withholding of all progress payments to the Contractor until reports are received, as provided in Section 1-09.9 of the *Standard Specifications*. If the report is not received by the due date, the Project

Engineer shall notify the Contractor of intent to defer payment within eight (8) calendar days of the report due date. When payments must be withheld, the Project Engineer must ensure that the Region Construction Manager/Construction Engineer and the State Construction Office are notified.

The original initial report and subsequent monthly reports should be placed in the project file and maintained with the temporary final records for the project. The Project Office will submit copies of the ARRA reports to the Region Construction Office and to the State Construction Office, and must be received by the 15th day of each month. The Project Office may utilize the HQ Construction Sharepoint site for purposes of submitting the monthly Contractor reports to the State Construction Office. The State Construction Office will submit this information to the FHWA Division Office and to FHWA headquarters.

WSDOT is required to report on WSDOT employees, hours and wages for each ARRA funded project. This will be handled at Headquarters by means of our existing systems. The Project Office is not required to submit this information. In addition WSDOT is required to report on amounts paid to DBE subcontractors for each ARRA funded project. This reporting will be handled by means of Form 422-102 EF "Quarterly Report of Amounts Credited as DBE Participation". This report, which is already required on Fed-Aid projects, must be submitted by the Contractor in a timely manner and submitted to the State Construction Office as soon as it is received by the Project Office. It is recommended that the Project Office utilize the HQ Construction Sharepoint site to insure timely DBE reporting on ARRA projects.

1-2.8 Control of Work

1-2.8A Authority of the Project Engineer

The Project Engineer is given considerable authority to enforce the provisions of the contract under Section 1-05.1 of the *Standard Specifications*. This authority is tempered by WSDOT's policies and delegation of authority from the Engineer to the Project Engineer. Accordingly, considerable care and professional judgment must be exercised by the Project Engineer in order to avoid exceeding the authority as delegated and to avoid decisions or actions that may be contrary to WSDOT policy. Should there be any doubts as to the limits of authority, the Project Engineer should consult the Regional Construction Manager.

Standard Specifications Section 1-07.16(1) *Private/Public Property* restricts the contractor from using Contracting Agency owned or controlled property other than property directly affected by the contract work without the approval of the Engineer. The Engineer has the authority to allow the use of Contracting Agency owned or controlled property within the project limits and any other property specifically listed for use in the contract. The use of any other Contracting Agency owned or controlled property would require a lease agreement as detailed in Chapter 11 of the WSDOT *Right of Way Manual*, M 26-01.

In many cases, the courts have held that where the Project Engineer has exceeded the authority provided in the plans and specifications or the authority delegated by the

Engineer, the actions of the Project Engineer are binding upon WSDOT. Because of this, it is important that the Project Engineer make no instructions, verbally or by written memoranda, that are outside the scope of the plans, specifications, contract provisions, or the authority delegated by the Engineer.

1-2.8B Contractor's Equipment, Personnel, and Operations

The Contractor is required to furnish adequate equipment for the intended use. The Contractor's equipment must also be maintained in good working condition. Prior to the start of work, the Project Engineer should ensure, by inspection, that the Contractor's plant, equipment, and tools comply with the specifications.

Whenever the specifications contain specific equipment requirements, the Project Engineer should verify that the equipment provided meets these specifications. This should be documented in project records such as the Inspector's Daily Report. The Contractor is required to furnish, upon request, any manuals, data, or specialized tools necessary to check the equipment.

It is most important that the operation of automatically controlled equipment be checked carefully and that the Contractor be advised immediately whenever the equipment is not performing properly.

The Contractor's supervisory personnel must be experienced, and able to properly execute the work at hand. If, in the Project Engineer's opinion, the Contractor's supervisory personnel are not fully competent, the Project Engineer should immediately notify the Regional Construction Manager of the facts in the matter, seeking assistance and advice.

It is expected that, consistent with WSDOT's policies and delegated authority, the Project Engineer will assist the Contractor in every way possible to accomplish the work under the contract. However, the Project Engineer must not undertake, in any way, to direct the method or manner of performing the work. Contrary to popular legend, this statement is true of force account work as well. Should the Contractor select a method of operation that results in substandard quality of work, non-specification results, a rate of progress insufficient to meet the contract schedule, or that otherwise violates the contract specifications or provisions, the Contractor should be ordered to discontinue that method or make changes in order to comply with the contract requirements. Where cooperation cannot be achieved, the Project Engineer should notify the Regional Construction Manager of the facts in the matter, seeking assistance and advice.

1-2.8C Defective or Unauthorized Materials or Work

Contract Final Acceptance for all work completed on a project is made solely by the Secretary of Transportation acting through the State Construction Engineer. However, the Engineer relies heavily on the actions and professional opinions of others, involved throughout the course of work, in determining acceptability. Because of this, it is expected

that the Project Engineer, working with the assistance of the Regional Construction Manager, as well as making full use of the many resources available at both the Regional level and Headquarters, particularly the office of the State Construction Engineer, will ensure that sufficient inspection is conducted in order to determine that the work performed or the materials utilized to construct the project comply with the requirements included in the contract plans and specifications. When inspections or tests are performed that indicate substandard work or materials, the Project Engineer should immediately notify the Contractor, rejecting the unsatisfactory work or material. When a review of the Contractor's work or materials used indicate questionable acceptability with regard to the specifications, the Contractor should be notified as quickly as possible so that changes in materials or work methods can be made in order to avoid materials or work being rejected.

1-2.8C(1) Defective Materials

The contract plans and specifications for construction of a project require that specific materials and/or work practices be utilized in completing the work. The Project Engineer may reject any materials not conforming to the requirements of the specifications. The rejected materials, whether in place or not, are to be immediately removed from the site of the work unless the following guidelines for acceptance of non-specification materials are followed:

Material Not in Place

1. Nonconforming materials that are within the defined tolerance limits noted in [Section 9-3.6](#) of this manual may be accepted for use on the project in accordance with the guidance in [Section 9-3.5](#).
2. There may be situations where WSDOT determines the use of nonconforming materials is acceptable. This requires prior approval of the State Construction Engineer and a change order modifying the project specifications.

Except for 1 and 2 above, materials that are known in advance as failing to comply with the Specifications are not to be incorporated into the work.

Material in Place

1. Price adjustments have been developed and are referenced in the contract for acceptance of certain materials whose properties cannot be determined until they are in place. Items this policy applies to include: concrete compressive strength, Portland cement concrete pavement thickness, hot mix asphalt mixture and density, and pavement smoothness.
2. Material incorporated into the work that is subsequently found to be in nonconformance with the specifications and for which price adjustments for acceptance are not included in the contract, must be reviewed to determine acceptability. The determination of acceptability should be made only when, in the Project Engineer's judgment, there is a possible service or benefit to be obtained from its use. If it is determined that no benefit or service is obtained from the material's use, the Project Engineer may direct that the material be immediately removed and replaced at no cost to WSDOT.

The Project Engineer may consult the State Construction Office, State Materials Laboratory, the State Bridge and Structures Office, or other design organizations for assistance in determining the usefulness of the nonconforming material. If consulted, these offices will offer technical advice to the extent that information is available. It is not intended to enter into extensive research to assess material which could be removed and replaced under the contract terms.

If the material is acceptable for continued use, a determination shall be made by the Project Engineer of the possible reduced service life caused by the material substitution and the resulting credit assessed by change order.

This determination of acceptability and the resulting credit must meet with the Region Construction Manager's approval for execution of the change order. In addition, prior review and approval must be obtained from the State Construction Engineer with a recommendation from the State Materials Engineer for the intended application of the material. With this determination for acceptance of non-specification material, discussions should be initiated with the Contractor and a change order completed.

If it is determined that the specification violation will not compromise the performance of the material and the nature of the violation is considered to be more of a technical infraction of the specification, the material may be accepted with a change order, possibly including a price reduction. If there is sufficient data and if the nature of the material makes analysis feasible, a pay factor may be determined using QC/QA methods similar to those described in the *Standard Specifications*, Section 1-06.2(2). If QC/QA can not be applied, the Project Engineer may determine an adjustment subjectively, using whatever information is available. This assessment or price adjustment is typically based on the unit bid price and may vary from no price adjustment up to the total contract unit bid price for the item involved. If it is determined that the violation is serious enough that the material can not be accepted for use on the project, the Project Engineer may direct its complete removal and replacement at no cost to WSDOT.

All change orders for acceptance of nonconforming materials are Contractor proposed and WSDOT is under no obligation to accept or approve any of them.

1-2.8C(2) Defective or Unauthorized Work

The following types of activities will be considered unauthorized work and will be completed solely at the risk and expense of the Contractor:

- Work performed contrary to, or regardless of, the instructions of the Project Engineer.
- Work and materials that do not conform to the contract requirements.
- Work done beyond the lines and grades set by the plans or the Engineer.
- Any deviation made from the plans and specifications without written authority of the Project Engineer.

Until all issues of material acceptance and conformity to the contract plans and specifications can be resolved, unauthorized work will not be measured and paid for

by WSDOT. The Project Engineer may direct that all unauthorized or defective work be immediately remedied, removed, replaced, or disposed of. In correcting unauthorized or defective work, the Contractor will be responsible to bear all costs in order to comply with the Engineer's order.

For additional guidance, see Section 1-05.7 of the *Standard Specifications*. If the Contractor fails or refuses to carry out the orders of the Engineer or to perform work in accordance with the contract requirements, the Project Engineer should immediately notify the Regional Construction Manager of the facts in the matter, seeking assistance and advice.

1-2.8C(3) Material Acceptance by Manufacturer's Certificate

All material is to be accepted for use on the project based on satisfactory test results that demonstrate compliance with the contract plans and specifications. All work demonstrating compliance is to be completed prior to the material's incorporation into the work. In many cases, this testing has already been completed in advance by the manufacturer. A Manufacturer's Certificate of Compliance is a means to utilize this work in lieu of job testing performed prior to each use of the product. While this provides for a timely use of the material upon arrival to the job site without having delay in waiting for the return of test results, it creates potential difficulties in obtaining and assessing the adequacy of a certificate.

Section 1-06.3 of the *Standard Specifications* describes the procedures for acceptance of materials based upon the Manufacturer's Certificate of Compliance. Division 9 of the *Standard Specifications* describes those materials that may be accepted on the basis of these certificates. Since a certificate is a substitute for prior testing, it is intended that all certificates be furnished to the Project Engineer prior to use or installation of the material.

However, there are some circumstances where the Contractor may request, in writing, the Project Engineer's approval to install materials prior to receipt and submittal of the required certificate. The Project Engineer's approval of this request must be conditioned upon withholding payment for the entire item of work until an acceptable Manufacturer's Certificate of Compliance is received. Examples of materials that *shall not* be approved by the Project Engineer for installation prior to the Contractor's submittal of an acceptable certificate are: materials encased in concrete (i.e., rebar, bridge drains, etc.); materials under succeeding items where the later work cannot be reasonably removed (i.e., culvert under a ramp to be opened to traffic); etc. The Project Engineer's approval or denial shall be in writing to the Contractor, stating the circumstances that determined the decision. If the requirements of this provision are followed, including the written request by the Contractor and the written approval by the Project Engineer, then the remedy for failure to provide the Certificate is the withholding of 100% of the cost of the material and the cost of the work associated with the installation of the material.

At the conclusion of the contract, there may still be some items that are lacking the required certificates. These items must be assessed as to their usefulness for the installation, prior to payment of the Final Estimate and subsequent

Materials Certification of the contract. The review of these items may include:

- Comparison with the suitability of other shipments to the project or other current projects.
- If possible, sampling and testing of the items involved or residual material from the particular lot or shipment.
- Independent inspection on site of the completed installation.

If it is determined that the uncertified material is not usable or is inappropriate for the completed work that incorporates the material, the Contractor should be directed to immediately remove the material, replacing it with other certified materials. If the material is found to be usable and is not detrimental to the installation it was incorporated into, it may be left in place but, if the provisions of Section 1-06.3 were followed, with a reduction to no pay. The reduction in pay will be the entire cost of the work (i.e., unit contract price, portion of lump sum, etc.) rather than only the material cost. The Contractor should continue to have the option of removing and replacing the uncertified material in order to regain contract payment for the installation. If the provisions of Section 1-06.3 were not followed, then there can be no withholding beyond the value of the missing work itself (the preparation and submittal of the Certificate.)

1-2.8D Contractor Submittals

Missing submittals is a principal source of delays in closing out the project and processing the final estimate. As the project proceeds toward completion, the Project Engineer and the Contractor should attempt to obtain all submittals as the need arises. These might include such things as materials certificates, certified payrolls, extension of time requests, or any other item or document that might delay processing the final estimate. Attention is needed to assure the receipt of these items from subcontractors as they complete their work.

1-2.8E Guarantees/Warranties

As specified in Section 1-05.10 and 1-06.5 of the *Standard Specifications*, the Contractor shall provide to the Project Engineer all guarantees, warranties, or manuals furnished as a customary trade practice, for material or equipment incorporated into the project. The Project Engineer should transmit the originals of any such guarantees / warranties or manuals to the organization that will be maintaining the items covered by the guarantee/warranty or manuals. The Project office should maintain a copy of the guarantee/warranty, and a letter of transmittal for manuals, with the materials documentation file for the project.

1-2.8F Contractor's Performance Reports

The procedures for completing and submitting the Prime Contractor's Performance Report are included with the report, Form 421-010, and the *Prime Contractor's Performance Report Manual*, M 41-40. The requirement for this report and other direction can also be found in WAC 468-16-150 and WAC 468-16-160.

Should the Contractor's typical performance on a contract become below standard, the Project Engineer should immediately notify the Regional Construction Manager of the facts in the matter, seeking assistance and advice.

1-3 Estimates and Records

1-3.1 Estimates

1-3.1A General

Payment for work performed by the Contractor and for materials on hand must be made in accordance with Section 1-09 of the *Standard Specifications*. To facilitate payments to the Contractor and ensure proper documentation, WSDOT utilizes an automated computer system to record project progress in terms of bid item quantity accomplishment. This is then used to pay the Contractor for actual work performed during each designated pay period or for materials on hand. The automated system that completes this task is called the Contract Administration and Payment System (CAPS). CAPS utilizes an electronic tie between each project office's computer system and the mainframe computer. This system provides access to a large volume of corporate data and facilitates the maintenance of this data by different groups in different locations. Some of these different activities include:

- **Contract Initiation** — A Headquarters action whereby new contracts are created and stored in a computer file. The information consists of the names of the Contractor and the Project Engineer, project descriptive data, accounting identifier numbers, preliminary estimate, proposal date, bid opening date, award date, execution date, accounting groups and distributions, and an electronic ledger.
- **Project Ledger** — An updating process by the Project Office which keeps track of work performed on the contract as it is completed.
- **Estimate Payments** — A Project Office action whereby progress estimates and Regional final estimates are processed directly from the Project Office. The Headquarters Final Estimate process activates the Region Final when all the required paperwork is in place. Supplemental final estimates are processed by Headquarters only. Complete instructions for use of the CAPS computer system are included in the manual titled *Contract Administration and Payment System* (M 13-01).

1-3.1B Progress Estimates

Progress estimates are normally processed on the 5th of the month for odd numbered contracts and on the 20th of the month for even numbered contracts. Where the Project Engineer deems it appropriate, estimates may also be run on other dates.

Estimates may also be run on other dates if the progress estimate or parts of the progress estimate were withheld to encourage compliance with some provision of the contract and the Contractor resolves the issue that caused the withholding. These estimates should be paid immediately upon resolution by the Contractor.

Within the CAPS system, the basis for making any estimate payment is information from the project ledger. Every entry in the ledger is marked by the computer as either paid, deferred, or eligible for payment. Before an estimate can be paid, a Ledger Pre-Estimate Report (RAKD300C-PE) must be produced. In constructing this report, the CAPS system

gathers all the ledger entries that are identified as eligible for payment, prints them on the report summarized by item, and shows the total amount completed to date for that item but not yet paid for by progress estimate. The report also shows any deferred entries or exceptions if they exist and includes a signature block for the Project Engineer's approval.

If there are errors or omissions in this report, the ledger must be changed to reflect the correct data. After corrections are made, the Ledger Pre-Estimate Report must be run again in order to get the corrections into the report and made available for payment by progress estimate. Once the Ledger Pre-Estimate Report is correct, an actual estimate can be paid. The report containing the Project Engineer's signature should be retained in the project files.

The estimate process is then accomplished with a few keystrokes in option 2, estimate payments, in the CAPS main menu. At this point, the CAPS system will automatically calculate mobilization, retainage (on projects containing no Federal funds), and the sales tax. The warrant will be produced, signed, and sent to the Contractor along with the Contract Estimate Payment Advice Report and two different sales tax summary reports. Copies of these reports will also be sent to the Project Office. When the Project Office receives their copy of the Contract Estimate Payment Advice Report, the total amount paid for contract items should be checked against the Pre-Estimate Report. This helps to verify that the amount paid was what the Project Engineer intended to pay. In addition, the ledger records that produced the estimate will now be marked by the CAPS system as being paid.

Up to the point of actually producing the warrant, the entire process for making a progress estimate payment is initiated and controlled by the Project Office.

Particular attention should be given to the comparison of the plan quantities and the estimate quantities for the various groups on the project as shown on the Ledger Pre-Estimate Report. Overpayments on intermediate progress estimates are sometimes difficult to resolve with the Contractor at the conclusion of the project.

New groups which do not change the termini of the original contract or changes in groups should be accomplished by memorandum from the Region to the State Accounting Services Office.

An additional estimate may be prepared if considerable work has been done between the date of the last progress estimate and the date of physical completion when the Engineer anticipates delays in preparing the final estimate. Should this circumstance occur, the additional estimate should show the work done to date no later than the day before the date of physical completion.

1-3.1B(1) Payment for Lump Sum Items

The Contractor is required to submit a detailed Lump Sum price breakdown for those items specified as Lump Sum for which there is no specified payment described in the payment clause of the applicable specification. Estimate payments for items specified as Lump Sum will be a percentage of the price in the Proposal, based on the Project Engineer's determination of the amount of work performed.

Consideration will be given to, but payment will not be based solely on, the Contractor's Lump Sum breakdown. The Project Engineer should verify that the price breakdown is based upon a reasonable proportioning of the work, and detailed enough to allow a determination of the work performed on a monthly basis.

Payment of the first 80 percent of the Lump Sum price for Type B Progress Schedules will be made on the next progress estimate following the submittal and approval of the Type B Progress Schedule. The payment will be increased to 100 percent of the Lump Sum price when the Contractor has attained 80 percent of the Original Contract Award amount, as shown on the CAPS Pre-Estimate Report (inclusive of payments made for Material on Hand).

On WSDOT contracts for which payment is made through CAPS (Contract Administration and Payment System), payment for mobilization is calculated and paid automatically by the system. On contracts that do not use CAPS, the Project Office must calculate, and make payment for, the Contract item "Mobilization". Payment will be made in accordance with *Standard Specification 1-09.7 - Mobilization*. Based on the lump sum Contract price for "Mobilization", partial payment will be made as follows:

1. When 5-percent of the original Contract amount has been earned from other Contract items, excluding any amounts paid for materials on hand, the Contractor is also entitled to a partial payment of the Bid item "Mobilization". This payment, which is in addition to payment for contract work performed, will be calculated as 50-percent of the amount bid for "Mobilization" or 5-percent of the original Contract amount, whichever is the least.
2. When 10-percent of the original Contract amount has been earned from other Contract items, excluding any amounts paid for materials on hand, the Contractor will be paid 100-percent of the amount bid for "Mobilization" or 10-percent of the original Contract amount, whichever is the least. This payment is in addition to payment for contract work performed.
3. When the Substantial Completion date has been established for the project, payment of any remaining portion of the lump sum item "Mobilization" will be made.

1-3.1B(2) Payment for Material on Hand

Payment for material on hand (MOH) may be considered for materials intended to be incorporated into the permanent work. The requirements for payment of MOH are noted in Section 1-09.8 of the *Standard Specifications*. Payments for MOH are made under the 900 series of item numbers as ledger entries and need to be backed out as items are utilized such that 900 series entries are zeroed at close out of the contract. Therefore logically payment for MOH shall not exceed the value of the corresponding bid item. It is the responsibility of the project engineer to devise procedures that assure this is done correctly.

Payments may be made provided the contractor submits documentation verifying the amounts requested, the materials meet the requirements of the contract and the materials are delivered to a specified storage site or stored at the suppliers/fabricators as approved by the project engineer. Materials

shall be segregated, identified and reserved for use on a specific contract or project. Payments commensurate with the percentage of completion may be paid for partially fabricated items.

All materials paid for as MOH must be readily available for inspection by the owner. Steel materials must be available for inspection but this availability need not be immediate. Reasonable notice should be given to allow the contractor to locate and make the material available for inspection. The project engineer may accept a higher level of risk that steel material may not be reserved for our use. The contractor's obligation to perform the work and the surety's guarantee of this obligation serve to offset the risk that reserved materials are diverted to other projects.

When materials paid for as MOH are stored in areas outside the general area the region shall make arrangements for inspection as deemed necessary prior to making payment. The region may utilize other regions or the State Materials Laboratory in doing so.

When contracts are estimated to cost more than \$2 million and require more than 120 working days to complete, a General Special Provision (GSP) will be included in the contract provisions, requiring documentation from the contractor as the basis for MOH payments and deductions. When this GSP is included in the contract provisions, the following procedure is used to determine how much of the MOH payment should be deducted from an estimate:

- Each month, no later than the estimate due date, the contractor will submit a document and the necessary backup to the Project Engineer that clearly states:
 - The dollar amount previously paid for MOH,
 - The dollar amount of the previously paid MOH incorporated into the various work items during the month, and
 - The dollar amount that should continue to be retained in MOH items.

If work is performed on the items and the contractor does not submit a document, all previous associated MOH payments may be deducted on the next progress estimate.

1-3.1B(3) Payment for Falsework

On those projects which include a lump sum item for bridge superstructure, payment may be made on request by the Contractor for falsework as a prorated percentage of the lump sum item as the work is accomplished. The Project Engineer may require the Contractor to furnish a breakdown of the costs to substantiate falsework costs. For any given payment request, the Contractor may be required to furnish invoices for materials used and substantiation for equipment and labor costs.

1-3.1B(4) Payment for Shoring or Extra Excavation

When Shoring or Extra Excavation Class A is included as a bid item, payment must be made as the work under the bid item is accomplished, the same as for any other lump sum bid item. When Shoring or Extra Excavation Class B is included as a bid item, measurement and payment shall be made in accordance with Sections 2-09.4 and 2-09.5 of the

Standard Specifications. RCW 39.04 provides that the costs of trench safety systems shall not be considered as incidental to any other contract item, and any attempt to include the trench safety systems as an incidental cost is prohibited. Accordingly, when no bid item is provided for either Shoring or Extra Excavation Class A or Shoring or Extra Excavation Class B and the Engineer deems that work to be necessary, payment will be made in accordance with Section 1-04.4 of the *Standard Specifications*.

1-3.1B(5) Payment for Asphalt, CRS-2P, Steel, and Fuel Cost Adjustment

Some projects may include the specifications for Asphalt Cost Adjustment, CRS-2P Cost Adjustment, Steel Cost Adjustment, or Fuel Cost Adjustment (one or more) as a General Special Provision. Not all projects will contain these provisions, since their use depends on the type of work, the duration of the contract, and Region preference. For those contracts containing one or more of the cost adjustment bid items, an adjustment (payment or credit) will be calculated monthly for qualifying changes in the index price of the commodity. No adjustment (payment or credit) shall be made if the 'Current Reference Cost' is within the percentage of the 'Base Cost' specified in the contract, and only those items that are included in the provision are eligible for adjustment. Worksheets are available, in the "Shared Documents" folder of the "HQ Construction" Sharepoint site (<http://sharedot.rp/hqconstr/default.aspx>), to assist the Project office in computing these price adjustments.

It is important to understand that the adjustments provided by these provisions are not a guarantee of full compensation for changes in the contractors cost, and that they are intended only to absorb some of the risk of severe cost escalation during contract performance. Because of this, the method of computing the adjustment has been simplified to eliminate tedious considerations that would otherwise be required to provide precise reimbursement of actual costs.

Payment for "Asphalt Cost Price Adjustment," "CRS-2P Cost Adjustment," and "Fuel Cost Adjustment" is based on quantities of the eligible material(s) incorporated during the period covered, as demonstrated by pay notes for those items. Payment for "Steel Cost Adjustment" is based on the quantity of eligible steel items incorporated or paid as Materials on Hand for the period covered. The Contractor is required to provide documentation of the quantities and the date shipped from the producing mill to the manufacturer. If the Contractor fails to provide the required documentation, any adjustment credit will be unilaterally computed by the Project Office using a shipment date determined by the Engineer. If the Contractor wishes to protest this adjustment, it must be done in accordance with Section 1-04.5 of the *Standard Specification*.

The provisions for these items are prescriptive, and should result in the correct adjustment if they are followed to the letter. Regardless of whether the estimate cutoff is the 5th of the month or the 20th of the month, any adjustment will apply the most current reference cost to the entire current quantity of each eligible item paid (or deferred) in the current estimate. When a portion of the payment for an eligible item is deferred, a similar portion of the price adjustment for that item should be deferred.

The provisions for these cost adjustments are silent in regard to changed work because there are other contract clauses that address how the Department will pay for changed work. Should changes occur in bid items that are eligible for adjustment, equitable adjustments should adhere to the guidance provided in Chapter 1-2.4C of this Manual. Under no circumstances should eligible items that were not included in the specifications at the time of bid be added by change order after award and execution of the contract. Likewise, these provisions should not be added by change order. FHWA will not participate in the cost of retroactive price adjustments.

1-3.1B(6) Payment for Surplus Processed Material

When excess aggregate is produced by the Contractor from a WSDOT furnished source, the Contractor will be reimbursed actual production costs if the excess materials meet the requirements of Section 1-09.10 of the *Standard Specifications*. If more than one type of aggregate is involved, the provisions of Section 1-09.10 apply to each type.

If WSDOT has a need for the excess aggregate for either maintenance or future construction contracts, the material may be purchased into the appropriate inventory account. The Project Engineer should contact Region Maintenance and Accounting for guidance. If aggregates are to be disposed of as surplus, the Project Engineer should contact the State Administrative Services Office, Purchasing and Inventory Section, for additional assistance.

1-3.1B(7) Liquidated Damages

Liquidated Damages and Direct Engineering, or other related charges, are to be addressed as described in the contract specifications, Section 1-08.9 of the *Standard Specifications*, and Chapter 1-2.5G of this manual. Direct Engineering charges are a form of Liquidated Damages and must be listed on the monthly progress estimates on the line for Liquidated Damages. Traffic related damages as described in Chapter 1-2.5G(2) of this manual are to be listed under Miscellaneous Deductions. The Project Engineer must evaluate potential Liquidated Damages that have accrued as a result of the expiration of contract time before the damages are withheld from moneys due the Contractor. The work and circumstances that have occurred over the course of the project should be reviewed to determine if there is potential entitlement for granting additional contract time. Liquidated Damages that have accrued should be adjusted for this evaluation. Liquidated Damages deemed chargeable should then be withheld from moneys due the Contractor each monthly progress estimate as Liquidated Damages accrue. While the Project Engineer takes the action to withhold damages as the work progresses, only the State Construction Office may actually assess those damages.

1-3.1B(8) Credits

Dollar amounts may be deducted as a “Below the Line Miscellaneous Deduction” from progress or final estimates when WSDOT is due a credit from the Contractor. Routine credits from the Contractor to WSDOT include, but are not limited to, the following items:

- Engineering labor costs when due to Contractor error or negligence, additional engineering time is required to correct a problem. This includes the costs of any necessary replacement of stakes and marks which are carelessly or willfully destroyed or damaged by the Contractor’s operation.
- Lost and/or damaged construction signs furnished to the Contractor by WSDOT. The Contractor should be given the opportunity to return the signs or replace them in kind prior to making the deductions.
- Assessment to WSDOT from a third party that is the result of the Contractor’s operations causing damage to a third party, for example, damage to a city fire plug. Actual costs will be deducted from the estimate.
- Other work by WSDOT forces or WSDOT materials when the Contractor cannot or will not repair damages that are the responsibility of the Contractor under the contract.
- Liquidated damages not associated with contract time, i.e., ramp closures, lane closures (see Chapter 1-2.5G).
- As provided for in the specifications, specific costs or credits owed WSDOT for unsuccessful contractor challenged samples and testing.

The authority to withhold and assess routine “Below the Line Miscellaneous Deduction” on progress and final estimates has been delegated to the Regional Construction Manager, and may be further subdelegated to the Project Engineer. The Project Engineer must give written documentation to the Contractor describing the deduction and provide sufficient notice of the impending assessment.

Credit items which are specifically provided for by the *Standard Specifications* or contract provisions, such as non-specification density, non-specification materials, etc. may be taken through the contract items established for those purposes. A change order is required for credit items which are not specifically provided for by the contract provisions.

Occasionally a Contractor will send a check directly to a Project Office for payment of money due WSDOT. (The Project Office should not request payment.) Whenever a Project Office or WSDOT employee receives a check or cash directly from a Contractor, it is very important that the guidance found in the *Accounting Manual* (M 13-82), Chapter 2-1, Control of Cash Receipts, be followed.

1-3.1B(9) Railroad Flagging

All dollar amounts actually incurred by the Railroad Company for railroad flagging, under the terms of the typical railroad agreement, will be paid by WSDOT. The Contractor will incur no costs for railroad flagging unless the flagging is for the Contractor’s benefit and convenience. In this case, the Project Engineer will deduct this cost on monthly progress estimates as a below the line item in the Contract Administration and Payment System.

1-3.1B(10) Payment for Third Party Damages

Section 1-2.4I of this manual details when WSDOT assumes responsibility and pays for third party damages. The *Risk Management Manual*, M 72 01, provides detailed guidance on procedures, including lines of communication. Payment should be made under the item “Reimbursement for Third Party Damages”. This item is only intended to be used for costs that are the responsibility of the contracting agency. If this item was not included in the contract, it may be added by change order using a separate group for each Control Section (as shown in the Plans) in which an incident occurs.

The next step is for the Project Engineer to determine if an incident warrants an attempt to recover costs based on cost effectiveness. If so, a memo is necessary to provide notice and information to the risk management office. Basically, they need the information necessary to investigate the incident, find the responsible party, determine the amount of the damages and obtain reimbursement for the State. The risk management office needs the following information:

- Contract Number, Project Description
- Names of Witnesses
- Documentation Related to the Damage
 - Change Order Number
 - Field Notes
 - Police Reports
 - Work Order Coding
- Summary of Repair Costs

1-3.1B(11) Withholding of Payments

Withholding payments for work the Contractor has performed and completed in accordance with the contract should not be done casually. There must be clear contract language supporting the action. The authority to withhold progress payments is subdelegated to the Regions. Further delegation to the Project Engineers is at the discretion of each Region.

There are very few occasions when it would be appropriate to withhold the total amount of a payment for completed work. If a minor amount of cleanup remains, if a portion of the associated paperwork has not been submitted, or if minor corrective measures are needed, then the correct action is to pay for the work and defer an amount commensurate with the needed remaining effort.

The concept of “allowing the Contractor to proceed at his own risk” and then withholding payment is not often supported by the contract. There is a contractual obligation to finish the work correctly, there would certainly be a “moral obligation” on the part of the Contractor to live up to the bargain, but there is no contract language that allows such an action. Specific exceptions to this rule are listed below.

Once a decision to withhold any part of the monthly payment has been reached, then it is imperative that the Contractor receive fair notice of this action. The method of this notice can be negotiated with the Contractor and could be a listing at the time of estimate cutoff, a copy of the pre-estimate report or other mechanism. Once notice has been provided, then it is also necessary to allow a reasonable time for corrections to be made.

No Payment for the Work

Standard Specification 1-06.3, “Manufacturer’s Certificate of Compliance” is unique in that this is a situation, specified as part of the contract, where the contractor may request permission to assume the risk for no certificate and end up never being paid for the related work.

Progress Payment Deferral

In the following situations, the contract specifies that the contracting agency has the authority to defer the entire progress payment:

- The contracting agency may not make any payments for work performed by a Prime/Subcontractor until the contractor performing the work has submitted a Statement of Intent to Pay Prevailing Wages approved by Labor and Industries (RCW 39.12.040)
- Failure to submit the “*required reports*” by their due dates (*Standard Specification* 1-07.11(10)B)

Wage Administration in General

The administration of wages and payment for the work are separate issues. Holding a force account payment for certified payrolls is not appropriate. Withholding payments on the contract is suggested as a method to achieve compliance under the *Standard Specifications* pertaining to wages (1-07.9(1)). This remedy should not be used without approval of the Headquarters Construction Office. Routine enforcement of wage requirements should be done on their own merits utilizing the sanctions specified as follows:

State Wage Administration

Labor and Industries is the enforcement agency for state prevailing wage administration. The State (WSDOT) is protected under the contract from wage claims by reserving 5 percent of the moneys earned as retained percentage. This 5 percent is made available for unpaid or underpaid wages liens among other claims. Contract payments should not be deferred due to a contractor’s failure to pay the State minimum prevailing wage.

Federal Wage Administration

FHWA 1273 specifies that the State Highway Administration (SHA) is in the enforcement role for federal prevailing wage administration. Under Section IV “*Payment of Predetermined Minimum Wage*” subsection 6., “*Withholding*,” the State Highway Administration (contracting agency) is authorized to withhold an amount deemed necessary to make up any shortfalls in meeting Davis Bacon prevailing wage requirements. It goes on to authorize the deferral of all payments, under certain conditions, until such violations have ceased. This is only for federal wage requirements and the amount “deemed necessary” must be based on the amount of the underpayment.

Application of the *Standard Specifications*

Under 1-05.1 Authority of the Engineer reads in part as follows: “If the Contractor fails to respond promptly to the requirements of the contract or orders from the Engineer:....
2. The Contracting Agency will not be obligated to pay the Contractor, and ”

Under Section 1-09.9 Payments reads in part as follows: “Failure to perform any of the obligations under the contract by the Contractor may be decreed by the Contracting Agency to be adequate reason for withholding any payments until compliance is achieved”.

Sounds good and we can do so, but withholding of payments owed the contractor must not be done on an arbitrary basis. Other than the previously noted exceptions, money is normally withheld because work/work methods are not in accordance with contract specifications. Also, the amount withheld must have a logical basis. We cannot penalize the contractor by withholding more than the out of compliance work is worth.

Withholding payments should not be used routinely as a tool for forcing compliance on general contract administration requirements. The State is protected against nonperformance by requiring a performance bond. In the event that lack of contract compliance puts the State at substantial risk monetarily or safety wise, it may be appropriate to inform the contractor of the compliance problem and suspend work under *Standard Specification* 1-05.1 “*Authority of the Engineer*” until corrections are made.

When withholding money, remember that delaying the contractor’s cash flow may damage the contractor’s ability to perform work. Before doing so, the State should be able to demonstrate:

- specifically what was not in accordance with the contract and where the requirement is specified in the documents
- that the amount withheld is commensurate with the amount of the unauthorized, uncompleted or defective work
- that the contractor was notified in a timely manner (within 8 days per prompt pay laws) and given a chance to make corrections
- that the State has worked with the contractor to mitigate corrections to non-specification work in order to minimize the cost

The State is required to pay the contractor in a prompt manner within 30 days after receipt of the work or after recognition of entitlement to additional compensation. The Project Engineer must keep an eye on the calendar when scheduling monthly estimate payments.

Regions are not authorized to withhold amounts that are greater than the estimated cost of the missing or incorrect portion of the work. Any such excess withholding must be approved by the Headquarters Construction Office.

1-3.1C Final Estimates — Regions

The final estimate for a project is processed in the same manner as a routine monthly progress estimate. The *Work Done to Date* entry on a final estimate is the physical completion date. When the Region final estimate is completed and is run in CAPS at the Region, it will not generate a warrant for the Contractor. Instead, the Region final estimate will produce several reports: a final Comparison of Quantities; the Contract Estimate Payment Advice; the Contract Estimate Payment Total; and the Sales Tax Summary.

These reports should be carefully checked to verify the accuracy of items, quantities posted, and the costs that have accumulated through various progress estimates during the life of the contract. Where necessary, corrections can be made to the ledger and the Region final estimate rerun as many times as it takes to make it correct before proceeding with the final estimate process.

If the final estimate shows an overpayment has been made to the Contractor, the estimate should still be processed in the same manner as a normal final estimate. If this occurs, the Contract Estimate Payment Totals report will show a minus amount due the Contractor. When the State Accounting Services Office receives the accepted final estimate package, that office will request any reimbursement due from the Contractor. The Project Engineer should not request reimbursement from the Contractor.

Once the Project Engineer has validated the final estimate amounts, a copy of the Comparison of Quantities Report, the Contract Estimate Payment Advice Report, and the Contract Estimate Payment Totals Report should be forwarded to the Contractor along with the Final Contract Voucher Certification. The Project Engineer might remind the Contractor that the person signing the Final Contract Voucher Certification must be authorized to do so. Authorized signatures are submitted by the contractor at the beginning of each contract.

Once the project has been physically completed, the final estimate package described above should be submitted to the Contractor for signature as soon as is reasonably possible. The final estimate package and request for the Contractor's signature should be transmitted to the Contractor formally. The effort to prepare the final estimate package will vary in nature and magnitude, depending on the project. In some cases, this work will conflict with field work on other projects. It is expected that final estimate preparation will be scheduled and accomplished as soon as possible, but not later than six months after physical completion.

Once the signatures and all necessary documents have been obtained, the final estimate package should be assembled by the Region and submitted to the State Construction Office. If any needed recommendations for assessment of liquidated damages associated with contract time have not already been submitted, this submittal should include them. The State Construction Office must resolve all issues of liquidated damages before the final estimate can be accepted and submitted to the State Accounting Services Office.

1-3.1D Final Estimates — Headquarters

The final estimate package submitted to the State Construction Office consists of the following:

- Project Status Report — the Project Status Report should address contract time and recommendations for liquidated damages related to contract time, amount of railroad flagging used if any, Miscellaneous Deductions identified, etc. In addition, the report should indicate whether or not all Affidavits of Wages Paid have been received for the Contractor, and all subcontractors, agents or lower-tier subcontractors.
- Final Contract Voucher Certification — Form 134-146, original only.

- If an assessment of liquidated damages has been made previously, include a copy of the letter from the State Construction Engineer to the Contractor assessing these.
- If an assessment of miscellaneous damages or liquidated damages resulting from causes other than time, include copies of letters from the Region to the Contractor for assessment of these.
- Contract Estimate Payment Totals — RAKC300F-EA.

The final estimate package is reviewed by the State Construction Office and submitted to the State Construction Engineer for acceptance of the contract. The date on which the State Construction Engineer signs the Final Contract Voucher Certification becomes the final acceptance date for the contract itself. The final estimate package is then submitted to the State Accounting Services Office.

1-3.1D(1) Final Estimate Claim Reservations

Should the Contractor indicate a claim reservation on the Final Contract Voucher Certification, it must be accompanied by all of the requirements of Section 1-09.11(2) of the *Standard Specifications* (provided these have not been met in a previous claim submittal). The Project Engineer must assure that the requirements have been met prior to submitting the final estimate package to the State Construction Office. If the claim package is incomplete, return the voucher to the Contractor with notice of the missing parts.

1-3.1D(2) Unilateral Acceptance of Final Estimates

The Project Engineer cannot establish a completion date for the contract if the Contractor is unwilling or unable to submit one or more of the required documents noted in Section 1-08.5 of *Standard Specifications*. However, the Region can request that the State Construction Engineer accept the contract by signing the Final Contract Voucher Certification (FCVC) in spite of the missing documents.

If the Contractor has not signed the FCVC, the Region can request that the State Construction Engineer accept the contract without the Contractor's signature. The Region is responsible for notifying the Contractor before such a request is made. The State Construction Office will generate the certified letter notice mentioned in the *Standard Specifications*, Section 1-09.9. The date of the State Construction Engineer's signature of the FCVC becomes both the acceptance date and the completion date of the contract, both established unilaterally.

1-3.1E Supplemental Final Estimates

A Supplemental Final Estimate is a payment adjustment made to a contract after the Final Estimate has been processed and the project has been accepted by the State Construction Engineer. A Supplemental Final Estimate may be necessary to correct an inadvertent under payment or where a claim settlement may require additional payment be made to the Contractor. In order to complete a Supplemental Final Estimate, the Project Engineer should complete and assemble the following items, routing them through the Region to the State Construction Office for review and further processing:

1. Complete any corrections or additional postings necessary in CAPS, including any postings to change order items added to CAPS for the settlement of a claim. (Please note, where additional CAPS postings are necessary after the Physical Completion date has been established, the *“Work Done To”* date in CAPS must be entered as the Physical Completion date or prior.)
2. Complete a Pre-Estimate report including the Project Engineer’s recommendation for payment.
3. Assemble the backup information supporting the necessity and substantiating the cost of the changes to be made.
4. Complete a supplemental Final Contract Voucher Certification (WSDOT Form 134-146 EF) reflecting the changes made and showing the new total *“Final Amount”*.

After review, the Pre-Estimate report will be signed by the State Construction Engineer authorizing payment to proceed.

While postings and corrections to CAPS may continue, once the Completion date has been established for a contract, CAPS will no longer allow the Project Engineer or the Region to process further payments to the Contractor. As a result, payment of the Supplemental Final Estimate will need to be completed for the Project Engineer by the WSDOT HQ Accountability and Financial Services Office.

If this process requires a more timely response, the above documentation may be scanned and e-mailed to the State Construction Office and CAPS; and the contract payments section can be requested to print out the pre-estimate report to be taken to the State Construction Engineer for signature prior to processing the supplemental final estimate. Once the supplemental payment is completed, the signed and executed Pre-Estimate report will be returned to the Project Engineer where it can be maintained as a part of the project payment files and made a part of the Region Temporary Final Records.

While a new Final Contract Voucher Certification is completed as a part of the Supplemental Final Estimate, the Acceptance date will remain the same as established by the State Construction Engineer’s signature on the original Final Contract Voucher Certification.

The above process may not be used when there has been an inadvertent over payment to the Contractor, the Final Estimate has been processed, and the project has been accepted by the State Construction Engineer. In this case, the Project Engineer must work with the Region, the contract payments section of the WSDOT Accountability and Financial Services Office, and the State Construction Office to make the correction. All dates in the system will be deleted, the correction made, and the Final Estimate process will begin again with the Region Final Estimate (see [Section 1-3.1C](#) of this manual).

1-3.1F Retained Percentage

Retained percentage withholding is based upon RCW 60.28, which provides that:

- A sum not to exceed 5 percent of the money earned by the Contractor on estimates for projects containing no Federal funds is to be retained by the Contracting Agency.

- The Contractor may submit a bond for all or any portion of the amount of funds retained by WSDOT.

When a contract is awarded, the Division of Accountability and Financial Services (AFS) / Contract Administration and Payments System (CAPS) unit or the Region Plans Office sends a package of contract documents to the Contractor.

This package of contract documents also includes the necessary instructions for the Contractor to make application for a bond to replace all or any portion of the retainage. The bond form will be processed by AFS/CAPS without involvement from Project Engineer’s Office, although the payment system will not allow them to process a payment until some form of retainage is in place.

The Contractor, at any time during the life of the contract, may make a request to the Project Engineer for the release of all or any portion of the amount of funds retained. This request does not need consent of surety since the retainage bond form, for this purpose, requires their consent. The Region must forward this request by transmittal letter to AFS/CAPS, which will furnish the appropriate bond form to the Contractor for execution. The Contractor may return the executed bond form directly to AFS/CAPS for final approval and signature by WSDOT.

- For projects containing no Federal funds that include landscaping work the Contractor may request that, 30 days after completion of all contract work other than landscaping work, WSDOT release and pay in full the amount of funds retained during the life of the contract for all work except landscaping. In order to initiate this release of funds, Form 421-009 EF should be completed by the Contractor and submitted to the Project Engineer. In signing the request, the Project Engineer will confirm that all work, except landscaping work, is in fact physically completed. For any landscaping work that may have been completed, the Project Engineer will designate the amount of landscaping moneys, if any, that have been earned to date by the contractor. In the space designated for remarks the Project Engineer will identify the landscaping or plant establishment work that remains to be completed and its approximate value. Except for landscaping work, the Project Engineer will determine if all Statements of Intent and Affidavit of Wages Paid have been received for the work that has been physically completed. WSDOT will continue to withhold a 5 percent retainage of any moneys earned for landscaping work that may have been completed to date and will continue to retain 5 percent of the moneys that are to be earned for landscaping that is yet to be completed. A bond is not required

The completed request along with the Project Engineer’s cover memo confirming receipt of Statement of Intent and Affidavit of Wages Paid for the Contractor, subcontractor, and any lower-tier subcontractors who were involved in the completed work, is then forwarded to the State Construction Office, through the Region Construction Office, for approval. Once approved, the Construction office will submit the request to AFS/

CAPS for further processing. If there are no claims against the retainage still in place and releases have been received from Revenue and Employment Security within the designated 60 day period, AFS/CAPS will release the appropriate portion of retainage to the Contractor.

1-3.2 Final Records for Projects Constructed by Contract

The Project Engineer is responsible for preparing all necessary records in order to document the work performed on the contract. Detailed instructions on the records required and methods of preparing them are covered in Chapter 10 of this manual.

1-3.3 Disputes and Claims

1-3.3A Claims By the Contractor

1-3.3A(1) Disagreement, Dispute, Protest

During the course of a contract, differences of opinion may arise over decisions and plan interpretations that benefit one party at the expense of the other. It is the policy of WSDOT to pursue resolution of these differences at the earliest possible time and to fully recognize all of the contractual rights of the Contractor during the resolution process.

Disagreements, disputes and protests are the responsibility of the Project Engineer until a formal claim is filed in accordance with Section 1-09.11(2). Contact the Headquarters Construction Office for concurrence before taking any issue to a Disputes Review Board. The Project Engineer may employ a variety of techniques and procedures to pursue resolution of these issues. With the high potential for cost impact, it is strongly recommended that all disagreements be identified and tracked.

When a protest occurs during a contract, the Contractor shall pursue resolution through the Project Engineer as outlined in Section 1-04.5 of the *Standard Specifications*. The Specification contains specific requirements which, if not followed, may result in a waiver of the Contractor's claim. The Project Engineer should monitor whether the Contractor is meeting these requirements. If all of the requirements have been met, the Project Engineer shall evaluate the merits of the protest and take whatever appropriate action is needed to resolve the issue. If it appears that the Contractor has failed to meet any of the requirements set forth in 1-04.5, the Project Engineer should advise the State Construction Office and request guidance. Pending such guidance, the Project Engineer may continue to discuss the protest with the Contractor with the qualification that no final evaluation of the protest will be made until permission is received from the State Construction Office.

1-3.3A(2) Claims

If the Contractor has pursued and exhausted all the means provided in Section 1-04.5 to resolve a dispute, the Contractor may file a formal claim. A formal claim, filed in accordance with Section 1-09.11(2), is a much more structured device and demands a high level of conformance with the contract requirements. The objective is to utilize

the rights that WSDOT has under the contract to identify the issues, obtain a sufficient level of information from the Contractor and limit the discussion to a defined subject matter. To accomplish this, and to maintain the Department's rights in a situation that may lead to court action and expensive lawsuits, the Project Engineer must insist on rigid conformance with the requirements of the provision. In fact, the first evaluation must not be of the claim's merit, but rather of the claim's structure and content. If the package fails the specification requirements in any way, it should be returned to the Contractor immediately with a written explanation. Conversely, if the package meets the contract requirements, then the Project Engineer must comply with the demands for WSDOT actions that are included in the same specification.

The existence of a formal claim does not diminish the responsibility of the Project Engineer to pursue resolution. The only difference is that Headquarters final approval of a proposed settlement is required. The change order settling a formal claim must include waiver language similar to the following:

"The Contractor, (company name), by the signing of this change order agrees and certifies that:

Upon payment of this change order in the amount of \$ _____, any and all claims set forth in the letter(s) to the Department of Transportation, dated _____ and signed by _____ of (company name) in the approximate amount of \$ _____, have been satisfied in full and the State of Washington is released and discharged from any such claims or extra compensation".

If the settlement is intended to close out all dispute discussions for the contract, use language similar to:

"The Contractor, (company name), by the signing of this change order agrees and certifies that:

Upon payment of this change order in the amount of \$ _____, any and all claims in any manner arising out of, or pertaining to, Contract No. _____, (including but not limited to those certain claims set forth in the letter(s) to the Department of

Transportation, dated _____ and signed by _____ of (company name) in the approximate amount of \$ _____, have been satisfied in full and the State of Washington is released and discharged from any such claims or extra compensation in any manner arising out of Contract No. _____".

1-3.3A(3) Legal Filing

Once the Contractor has submitted a formal claim in acceptable form and the State has either denied the claim or failed to respond in the time allowed, the Contractor is free to seek judicial action by filing a lawsuit or, in some cases, demanding binding arbitration. Note that the Contractor must fully comply with the provisions of Section 1-09.11 before it can seek judicial relief. Once any legal action has been started, the Project Engineer may only continue with settlement efforts if the Attorney General's office has

given specific permission to do so. Such permission may be sought through the State Construction Office. Settlements of claims which have resulted in a judicial filing need review and approval by the Attorney General's office and different waiver language similar to the following:

"The Contractor, (company name), by the signing of this change order agrees and certifies that:

Upon payment of this change order in the amount of \$ _____, any and all claims in any manner arising out of, or pertaining to, Contract No. _____, (including but not limited to those certain claims set forth in the complaint filed under Thurston County Cause No. _____ (Contractor's name) vs. State of Washington), have been satisfied in full and the State of Washington is released and discharged from any such claims or extra compensation in any manner arising out of Contract No. _____".

1-3.3A(4) Final Contract Voucher Certification

In some cases, of course, the Contractor will not have been so cooperative as to participate in resolution efforts. After a protest has been disallowed, there may have been no formal claim filed and the Project Engineer really doesn't know if there is a continuing problem. The way to resolve this after the project is physically complete is to assemble the final estimate and send it to the Contractor with a Final Contract Voucher Certification (FCVC). The FCVC is the Contractor's last chance to formally file a claim. If there is no exception above the Contractor's signature on the FCVC, there is no claim. The contract will be over as soon as the State Construction Engineer accepts it. If the Contractor does not return the FCVC in a reasonable time, WSDOT may unilaterally set the completion date and process the final estimate without the Contractor's signature. Proposals to unilaterally accept a contract should be discussed with Region managers before any action is initiated.

1-3.3B Claims Against the Contractor — Damage

The Department has a claims office, now known as the Washington State Department of Transportation Risk Management Office (RMO). All receptionist job descriptions, all Region operations manuals, and all telephone training is set up to refer citizens with damage claims related to construction to the RMO and to provide the toll free number (1-800-737-0615). The RMO will react to the call, issuing claims forms, contacting the contractor, and following up on the actions taken. The Project Engineer's role is to appropriately advise the RMO, if needed. There may be confusion about which contract is involved. Field office knowledge about the incident and the surrounding circumstances may be solicited. The contractor's insurance and the insurance provided by the Contractor for the State may be involved and information about the policy will, most likely, be requested.

If, in spite of the Department process, the claimant contacts the field office directly, the Project Engineer should refer the claimant to the State Risk Management Office (1-800-737-0615).

1-3.3C Claims Against the Contractor — Money

Claims received by the Region for money owed by the Contractor should be referred to the Contractor. A claimant should be advised of the legal right to file a lien against the retained percentage or performance bond for claims involving labor, equipment, or materials used on the project and be referred to the State Accounting Services Office for obtaining the necessary lien forms.

1-3.3D Claims Against Officials and Employees

The statutes provide that claims may be filed against the State of Washington, State officers and employees, for damages resulting from their conduct and prescribes the manner in which the action must be taken. Whenever this occurs, the state will furnish the legal defense and pay any judgments if the act which caused the alleged damage was within the scope of the person's duties, was in good faith, and without negligence.

1-3.4 Stewardship

Webster defines "steward" as "one who acts as a supervisor or administrator, as of finances and property, for another or others." the designated steward of all federal highway funds is the United States Department of Transportation, acting through the Federal Highway Administration. In Washington State, FHWA is represented by its Washington Division. Washington Division has delegated a portion of its stewardship responsibility (and the corresponding authority) to the Washington State Department of Transportation through the Federal-Aid Highway Program Stewardship and Oversight Agreement, signed on February 19, 2008.

This section describes further agreement between FHWA and WSDOT concerning the details of the part of the stewardship agreement that applies to construction (Section V c. Construction and Contract Administration and VII Appendix B Construction Monitoring Plan). The subject matter of this sub-agreement is monitoring of construction performed on behalf of WSDOT by independent contractors.

Scope of Construction Monitoring Plan

This plan deals specifically with federally-financed construction performed under contracts with WSDOT and administered through the WSDOT State Construction Office. It is not intended to be all-encompassing. WSDOT Ferries Division contracts for construction of vessels and facilities are not included. Contracts for work through local agencies are not included. Federally-financed utility agreements are not included. Emergency Relief work performed by contractors and administered by WSDOT Maintenance is not included.

Project Responsibility

FHWA, Washington Division, has delegated to WSDOT (and through the WSDOT delegation of authority to the State Construction Office) stewardship responsibility and authority for all federally-funded construction except new construction and re-construction on the Interstate system and certain specially-selected areas of high interest. The

special selections are made by FHWA and include significant demonstration projects, special funding agreements and projects of very high national interest. Projects with full FHWA oversight are listed on the State Construction Office web site at: www.wsdot.wa.gov/biz/construction/Stewardship/Stewardship.xls.

The Construction Office has further delegated the stewardship reporting responsibility for projects with a contract value less than \$6.0 Million to the various WSDOT Regions. The delegation of stewardship authority from Headquarters to the Regions is through the *Construction Manual*.

FHWA has also delegated to WSDOT the authority to accept projects on the Interstate system that are not new construction or re-construction. This authority has been further sub-delegated to the Regions for projects with a contract value less than \$6.0 Million.

FHWA Review/Approval Actions & Related Processes

With the pre-approval of specifications and processes and the extensive delegation of stewardship authority, there are relatively few approval actions needed from FHWA during actual construction.

For new construction and re-construction on the Interstate system, FHWA has retained the oversight role of interim, or project, inspections, final inspections and acceptance, and the approval of certain high-value change orders.

The following processes will apply:

For project inspections, the WSDOT Project Engineer and the FHWA Area Engineer shall agree on the timing of such inspections. Typically, project inspections will take place quarterly, however, the Area Engineer may select other frequencies. The Project Engineer will advise the Area Engineer when agreed milestones or completion stages have been accomplished and the Area Engineer will schedule the review and prepare the report. (A similar process will be followed between the Project Engineer and the Headquarters Construction representative for delegated projects when the delegation has been retained at Headquarters. Regions will develop processes for those jobs delegated to them.)

For final inspections and acceptance, the review will be conducted in two parts. The first part will be a field review of the work and will be conducted at about the time of physical completion, when the contractor is still available to make corrections or changes identified during the review. The second part of the process will be the final acceptance review. This will be conducted after WSDOT has accepted the contract and has assembled all cost and materials documents. The second part of the review (acceptance) may be conducted with an exchange of documents and without a physical visit to the site. The Project Engineer will notify the Area Engineer when these times have arrived and the Area Engineer will schedule the reviews and will prepare one final report summarizing both reviews. (A similar process will be followed between the Project Engineer and the Headquarters Construction representative for delegated projects when the delegation has been retained at Headquarters. Regions will develop processes for those jobs delegated to them.)

Change orders on FHWA stewardship projects (for which FHWA has not delegated stewardship responsibility to WSDOT) may be approved by WSDOT unless they alter the termini, character or scope of work of the contract they have a net value of more than \$200,000, or they change contract time by more than 30 days. Note: Changes that adjust quantities without changing the work may be approved by WSDOT regardless of value. FHWA approval will normally be a written formal response, but may be verbal if the public interest is served by the more timely action. In all cases, the FHWA approval of a change order shall be obtained through the State Construction Office.

The FHWA Area Engineer may also choose to accompany the WSDOT reviewer during the review of any federal-aid project. Such participation will be random and will be initiated by the Area Engineer. This participation by the FHWA will not change any delegation of oversight responsibility or authority in any way. When the Area Engineer has participated in a review, a copy of the summary report will be provided directly to the Area Engineer.

Stewardship Summary Reports

It is important to note the difference between a steward and a stewardship reviewer/reporter. Stewardship on WSDOT federal-aid projects is provided by a wide cross-section of employees who make stewardship decisions according to the requirements of the *Construction Manual* and their own delegated responsibilities and authorities. From the field inspector who observes contract work and prepares pay instructions, to the Project Engineer who reviews and approves a monthly progress payment, to the Region Construction Manager who executes a change order, to the State Construction Engineer who negotiates and approves a claim settlement, all are acting as stewards in their own job descriptions and assignments.

The stewardship reviewer/reporter, on the other hand, is acting as an overseer, observing and collecting information about all of the stewardship activities, evaluating that information, making recommendations concerning the qualification of the covered work for federal funding and preparing reports to summarize the activities. Reviewers may be FHWA Area Engineers, State Construction Engineers, Region Managers or subordinate Region specialists in documentation or contract administration. For the reports that it prepares, WSDOT may assign any person of the classification of Transportation Engineer 3 or above to this duty. The only restrictions are that the reviewer must not have been involved in the project-level administration and the report must be signed by someone with supervisory authority over the Project Engineer or management responsibility over the contract itself.

- **Types of Reports**

Interim Reports (also known as Project Reports) are intermediate summaries of stewardship activities on an uncompleted project. These will be performed on multi-season jobs at least annually. Interim reports may be submitted at a greater frequency or for a special purpose at any time, at the discretion of the stewardship reviewer. Interim reports may be submitted on single-season projects for special purposes, again at the discretion of the reviewer.

Abbreviated Final Inspection/Acceptance Reports are single page closeout reports for projects between \$1.00 and \$500,000 that summarize the project in more of a checklist format with opportunity for comments. It will still be necessary for the Stewardship reviewer to evaluate the project documentation and procedures, but the reporting will not be to the same level of detail as a Final Inspection and Acceptance of Federal Aid Project for a project over \$500,001. Final Inspection/Acceptance Reports are single close-out reports that summarize the results of reviews conducted in two parts at the completion of all projects. The first part is a review of the field work conducted at a time when the contractor is still available to perform additional work or corrective work. The second part is after acceptance, when the final cost figures are known and the materials certification is available. For FHWA-retained projects, the final inspection and acceptance will be conducted by the FHWA Area Engineer. For delegated projects with a greater value than \$6.0 Million, the final inspection and acceptance will be conducted by a representative of the State Construction Office. For projects further delegated to a Region, the final inspection and acceptance will be conducted by a Region representative. The final acceptance portion of the final review may be done without a site visit, working from documents and computer data only.

- **Timing of Reports**

At least once per year, Headquarters Construction will publish a list of all projects that have been started and not closed out for federal funding. The list will be divided to show the responsibility for stewardship reporting for each project. In the past a Final Inspection and Acceptance of federal-aid project report was required for each project financed in part or in whole with federal dollars. In an effort to expedite contract closure and move unused obligated funds back into the various highway programs sooner, stewardship reporting will take the following course:

- For projects with values between \$1 and \$500,000: 25% of the projects will be selected from each project office from each Region and an abbreviated Final Inspection and Acceptance of Federal-Aid Project will be required.
- For projects with values between \$500,001 and \$6,000,000: 50% of the projects will be selected from each project office from each Region and a Final Inspection and Acceptance for Federal-Aid Project (WSDOT Form No. 421-101 EF) will be required.
- For projects with values greater than \$6,000,000: 50% of the projects will require a Final Inspection and Acceptance of Federal-Aid Project form.

Interim reports will be performed at times that are appropriate for the nature and progress of the work and the seasonality of the project. These times will be determined through the judgment of the reviewer. The objective for all reviewers will be to prepare and submit interim reports within 30 calendar days after the field review.

For Abbreviated Final Inspection/Acceptance Reports, final inspection will be conducted around the time of physical completion, while the contractor is still mobilized and able to perform corrective or added tasks. Final acceptance review of the project will be conducted after the State Construction Engineer's final acceptance of the contract itself and after receipt of the Region's Materials Certification. The objective for all reviewers will be to prepare and submit the Abbreviated Inspection/Acceptance Report within 30 calendar days after project final acceptance. Final inspections for projects over \$500,001 will be conducted around the time of physical completion, while the contractor is still mobilized and able to perform corrective or added tasks. The Project Engineer is in the best position to identify this time and shall advise the reviewer that a final inspection is needed. Final acceptance reviews will be conducted after the State Construction Engineer's final acceptance of the contract itself and after receipt of the Region's Materials Certification. The objective for all reviewers will be to prepare and submit the final inspection/acceptance report within 60 calendar days after project final acceptance.

Copies of reports prepared by FHWA will be sent to the State Construction Office. Copies of reports prepared by any WSDOT reviewer will be collected by the State Construction Office and forwarded to FHWA.

- **Content of Reports:**

Stewardship reports provide a high-level overview for those who may not know the project intimately, but may need to be aware of the more significant details of the contract. Communicating those details in a concise and comprehensive manner is a critical aspect of the report. Any individual reading the report should be able to have a reasonable idea of how the project proceeded.

In addition to providing an objective view of the project, a stewardship report should clearly identify what is unique to that project and what circumstances made it unique. Most of our projects are routine and the stewardship reports will reflect that. However, when a project has conditions that are out of the ordinary, the stewardship report should explain what occurred on the project to make those conditions significant.

The ability to write a practical report in a clear and concise manner is a mark of a good engineer.

Job Description: A description of the major elements of the work. Include a narrative about the job. Include the contractor's name, the award date and the amount of the bid.

Time and Damages: On an interim report, discuss the present status of time and its relationship to the completion status. If behind, describe what is being done to catch up. Describe any suspensions or time extensions. On a final report, discuss the final time result. If overrun, discuss liquidated damages. Subjectively, comment on the amount of time set up. If working days are extended by 10% of the original contract amount, describe the cause(s) that warranted the increase.

Change Orders: Confirm that each change was approved according to the checklist before the work started. Evaluate the preparation of the change order and the justification. For all changes, include a statement of federal participation eligibility. Include more detailed discussions of major or significant changes (e.g. Scope Change, Claim Settlements, Significant Actions, and Changes over \$100,000).

Cost: List the final payment, the original amount, the net effect of change orders and the mathematical calculation of net overruns/underruns. Obtain and include a general explanation of the overs and unders.

Materials: On an interim report, review a process in progress by checking for submittals and approvals of RAMs, any drawing or catalog submittals, the testing method and frequency, adjustments to the ROM, observe field tests and include a summary report. Comment on the overall status of materials testing, documentation and adequacy. On a final report, review the Region Materials Certification, comment on any missing items and mention the resolution of the certification for participation purposes. If material deficiencies warrant withholding of Federal participation, define the deficiencies and the amount of Federal participation being withheld. Refer to the following section, “Quality Improvement and Accountability,” in the Stewardship and Oversight Agreement, for a discussion on selection of processes for review.

Disputes, Claims: On an interim report, note any claims or major disputes presently underway. Note how previous issues have been resolved. On a final report, note any exceptions to the final voucher certification and describe the issue.

Traffic Control: Comment on the adequacy of the traffic control plans. Discuss the project’s use of flagging, devices, pilot cars, etc. and any unusual events during the project.

Training: On an interim report, determine that a plan has been submitted and approved. Also, note the comparison between accomplished training and the completion status. Report any efforts to recover if behind. On the final report, list the amount of training originally included, any changes made to this requirement and the total amount of training accomplished.

Subcontracting: Discuss the level and nature of subcontracted work. Note any DBE requirements and any change orders modifying these requirements by deleting, adding or substituting DBE commitments. Make reference to any Condition of Award requirements. Assure that mandatory DBE contracting did happen and that the DBEs performed a commercially useful function (review the On-Site reports). Review on-site reports for any DBE firm utilized, whether or not its utilization was mandatory.

Other: Talk to the Project Engineer. Look for special notes. If there was an experimental specification or process, discuss it. If there was an unusual event or happenstance, discuss that. Describe the overall

impression of the contractual relationship. Describe any evidence of successful collaboration between the parties. Include any other information of interest.

Note: As a significant part of any review, the reviewer must visit the jobsite and confirm that a project of approximately the nature and magnitude of that shown on the plans actually does exist. This is true for all stewardship reporting.

Communication

Much of the day-to-day communication between WSDOT and FHWA is informal in nature. Verbal discussions, telephone consultations and e-mail notices (including digital photos when needed for clarity) are used extensively. Except where formal written notices are specifically required, staff from both agencies will attempt to utilize the simplest form of communication that accomplishes the needed communication in the least time. All reports and correspondence related to a project shall bear both the WSDOT contract number and the FHWA project number as identifiers.

1-4 Utility and Railroad Relocation

1-4.1 Work Performed Under Utility Agreements

Utility agreement work associated with a contract exists in two categories. The first is work done for a utility by WSDOT that is included in the contract and performed by the WSDOT contractor. The second is work done, either by the utility or the utility’s contractor, that is associated with and done near the WSDOT project.

If the utility work is included in the contract, the plans will show the work and will include pay items exactly as if the work was part of the transportation improvement. The responsibility of the Project Engineer is to treat this work the same way that “normal” work is handled. There will be a necessity for communication with the utility itself, inviting comments and joint reviews and inspection of the work. In many cases, the utility will provide materials or equipment to be incorporated into the work. The utility will also provide certification that provided material meets the requirements of the contract. If problems arise and changes are considered, there are additional paperwork demands. The Project Engineer should consult with the Utility and the Region Utility Engineer.

If the work is associated with the project, or if unrelated work is being done nearby, and the utility or its contractor is performing the work, the Project Engineer should treat the neighboring work in the same manner that adjacent WSDOT work would be treated. (See *Standard Specifications*, Section 1-05.14 and Section 1-2.2H of this manual.)

1-4.2 Work Performed Under Railroad Agreements

Railroad work associated with a contract exists in three categories. The first is work done for a railroad by WSDOT that is included in the contract and performed by the WSDOT contractor. The second is work done, either by the railroad or the railroad’s contractor, that is associated with and done near

the WSDOT project. The third category is railroad protective services. Protective services, such as flagging, are typically provided by the railroad.

If the railroad work is included in the contract, the plans will show the work and will include pay items exactly as if the work was part of the transportation improvement. The responsibility of the Project Engineer is to treat this work the same way that “normal” work is handled. There will be a necessity for communication with the railroad itself, inviting comments and joint reviews and inspection of the work. In many cases, the railroad will provide materials or equipment to be incorporated into the work. The railroad will also provide certification that provided material meets the requirements of the contract. If problems arise and changes are considered, there are additional paperwork demands. The Project Engineer should consult with the Railroad Company and the Region Utility Engineer.

If the work is associated with the project, or if unrelated work is being done nearby, and the railroad or its contractor is performing the work, the Project Engineer should treat the neighboring work in the same manner that adjacent WSDOT work would be treated. (See *Standard Specifications*, Section 1-05.14 and Section 1-2.2H of this manual.)

Protective services may be called for when the Contractor is performing work on railroad facilities (first category above) or when the Contractor’s work is conflicting or adjacent to a railroad facility that is not being changed. Typically, the railroad will determine the need for service, provide the protective services, and send the bill to WSDOT. There may be an agreement in place, or the railroad’s actions may be unilateral. On all projects including railroad flagging, the Project Engineer will notify the Railroad Company when all work involving the railroad is physically complete.

The addition or revision of agreements with the railroad can be lengthy processes. The Project Engineer should stay alert for possible changes and the need for revisions to the agreement. When these arise, the Railroad Company and the Region Utility Engineer should be contacted early and often.

1-5 Surveying

1-5.1 Site Surveying

1-5.1A Permanent Monuments

Most permanent monuments which are in the construction zone are relocated by the establishing agency. Normally these monuments are relocated prior to beginning of construction, but if monuments are found within the construction zone, they must be preserved until they can be moved. If the urgency of construction does not allow time for the relocation of the monument, it must be properly referenced so it may be reset or relocated at a later time. When a monument is found within the construction area, the proper agency shall be notified promptly and requested to relocate the monument.

1-5.1B Property Corner Monuments and Markers

It is imperative that land plats and property corners be preserved. The 1973 Legislature enacted a Survey Recording Act, RCW 58.09, to provide a method for preserving evidence of land surveys by establishing standards and procedures for monuments and for recording surveys as a public record. When a general land office corner, plat survey corner, or property line corner exists in the construction zone, it is necessary to properly reference it and reset it after the construction work has been done. RCW 58.09.040 requires that, for all monuments that are set or reset, a record of the monument be filed on a Monumentation Map with the County Engineer in the county in which the corner exists and the original sent to the State Right of Way Plans Branch. Headquarters will forward a copy to DNR for their records.

1-5.1C Alignment Monumentation

During construction, alignment monumentation may be altered to fit field conditions. Such changes may include:

- Normally all PCs and PTs are to be monumented. Additional point on tangent (POT) monuments are necessary where line of sight is, or may in the future be obstructed by the horizontal or vertical alignment, buildings, or other barriers.
- When the right of way and the construction alignment do not coincide, the monumentation shall be such that the exact right of way as acquired can be positioned in the field. This will generally require, as a minimum, that the right of way alignment be monumented.
- When safety of the survey crew or survival of the monuments is an issue, monuments may be offset from the true alignment. An extra effort in accuracy must be made when setting offset monuments to ensure an accurate reestablishment of the true alignment. The monumentation, including monument locations, reference distances, stations, and bearings, is to be shown on the as built plans.

1-5.2 Construction Surveying

1-5.2A Surveying Provided by the State

Unless the contract states otherwise, the Project Engineer is responsible for providing all surveying needed to locate and define the contract work. The staking done in construction surveying must assure that the work will conform to the plans and must also conform to the Contractor’s approach to the work. There are numerous survey techniques that will accomplish these objectives. Prior to each phase of the work, the Project Engineer must reach agreement with the Contractor concerning the method, location, and timing of construction staking. Once this agreement is reached, it must be shared with all WSDOT, Contractor, and subcontractor personnel who place or use construction stakes.

1-5.2B Contractor Surveying

If the contract requires the Contractor to provide some or all of the construction surveying, the Project Engineer is required to provide only the primary control points staked, marked, and verified in the field and the coordinate information for the main alignment points in the plans. The plan alignment and the field control points must be referenced to the same grid coordinate system.

The provisions for contractor surveying are intended to provide the stakes needed to inspect the work, as well as the primary function of locating and defining the work. If the survey stakes required by the contract do not provide the reference data needed for inspection, then the Project Engineer will have to provide additional survey work that is needed. As an alternative, a change could be negotiated with the Contractor to perform the added work.

The Contractor's survey work is a contract item, just like all other contract items. It must be inspected for adequacy and conformance with the contract. Once it is performed and inspected, it must be paid for.

The wise Project Engineer will inspect the survey efforts and check as much of the contractor's work as is practical. Any errors should be brought to the Contractor's attention for corrective action. The inclusion of contractor surveying in a project transfers the risk of survey errors to the Contractor. The Project Engineer must assure that the survey work of the Contracting Agency does not relieve the Contractor of that risk.

1-5.2C Grade Control

1-5.2C(1) Subgrade Tolerance

The finish required on roadway subgrades shall ensure a final grade in as close conformity to the planned grade and cross-section as is practicable, consistent with the type of material being placed. Subgrade blue tops shall be set 0.05 foot below subgrade elevation and be accurate to + or - 0.01 foot. The finished subgrade surface shall not deviate from the plan subgrade elevation by more than +0.00 to -0.05 foot. Where excessively rocky materials are being placed, deviations in excess of the above may be accepted where, in the opinion of the Engineer, closer conformance cannot be achieved by normal procedures and with a reasonable amount of effort and care on the part of the Contractor. Conformance to grade shall be checked by rod and level, straight-edging, or other appropriate engineering method as selected by the Engineer.

1-5.2C(2) Surfacing Tolerance

Red and Yellow tops for surfacing materials shall be set accurate to + or - 0.01 foot. The finish of the compacted materials shall conform to the grade established by the blue tops as closely as is practicable and in general, should not deviate from the established grade in excess of the following: ballast and base course, + or - 0.05 foot; top course for bituminous surface treatment, + or - 0.03 foot; top course for asphalt concrete, + or - 0.02 foot; surfacing under treated base course, + or - 0.03 foot; treated base under Portland cement concrete pavement, + 0.00 to - 0/02 foot.

Conformance should be checked by use of rod and levels from blue tops and/or by string-line or straight edge methods as determined appropriate by the Engineer. The above schedule refers to conformance both longitudinally and transversely to the traveled way. The outer shoulder line finished grades shall not exceed double the deviations outlined for the traveled way.

In the event that additional blue tops are not set for setting grade of surfacing courses, the grade of the surfacing shall be referenced to the earthwork subgrade blue tops and adequate controls shall be used to ensure the placement of the required thickness of surfacing and a final surface meeting the requirements outlined above.

1-6 Inspection of Course Thicknesses

Tabulated below are the permissible deviations in measured thickness for specified depths of surfacing and paving. While these are the maximum deviations that can be allowed, the Project Engineer may impose tighter requirements for conforming to the plan dimensions where there is a reason to do so.

| Material | Specified Depth | Max. Allowable Deviation at Any One Point | Average Depth Deviation for Entire Project |
|--|-----------------|---|--|
| Untreated Surfacing and ATB | 0 – 0.25' | -0.05' | -0.025' |
| | 0.26 – 0.50' | -0.06' | -0.03' |
| | 0.51 – 0.75' | -0.07' | -0.035' |
| | 0.76 – 1.0' | -0.08' | -0.04' |
| | Over 1.0' | -8% | -4% |
| Hot Mix Asphalt (HMA) (single-lift) (multi-lift) | 0.08 – 0.15' | -0.045' | -0.015' |
| | 0.00 – 0.25' | -0.03' | -0.01' |
| | 0.26 – 0.50' | -0.045' | -0.015' |
| | 0.51 – 0.75' | -0.06' | -0.02' |
| | Over 0.75' | -0.075' | -0.025' |

For HMA overlays with a specified depth of less than 0.08 foot, it will be the responsibility of the Project Engineer to ascertain the adequacy of the overlay depth in conformance to the plan.